



CITY OF AURORA, ILLINOIS

RESOLUTION NO. R22-378  
DATE OF PASSAGE December 20, 2022

A Resolution to Enter into a Three Year ATM Space Lease Agreement with Old Second Bank.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, Old Second Bank has five ATMs located throughout the City; and

WHEREAS the ATMS are located at the Aurora Transportation Center; the Route 59 Train Station; the Police Department; Phillips Park Golf Course; and City Hall; and

WHEREAS the City desires to enter into a three (3) year lease for the placement of those ATMs;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, as follows: the City shall enter into a three (3) year lease with Old Second Bank for the placement of five ATMs.



RESOLUTION NO. R22-378

LEGISTAR NO. 22-0859

PASSED AND APPROVED ON December 20, 2022

AYES 12 NAYS 0 NOT VOTING 0 ABSENT 0

ALDERMAN	Vote
Alderman Llamas, Ward 1	yes
Alderwoman Garza, Ward 2	yes
Alderman Mesiacos, Ward 3	yes
Alderman Donnell, Ward 4	yes
Alderman Franco, Ward 5	yes
Alderman Saville, Ward 6	yes
Alderwoman Hart-Burns, Ward 7	yes
Alderwoman Smith, Ward 8	yes
Alderman Bugg, Ward 9	yes
Alderwoman Baid, Ward 10	yes
Alderman Woerman, At Large	yes
Alderman Jenkins, At Large	yes

ATTEST:

  
City Clerk

  
Mayor



## ATM LEASE SPACE AGREEMENT

THIS AGREEMENT, made and entered into as of the 5th day of December 2022 by and between The Old Second National Bank ("Bank") and City of Aurora "City"). As used herein, the term "Agreement" shall refer to this ATM Master Agreement and such Installation Agreements, in the form attached hereto as Exhibit A, as are executed in connection herewith, all as more fully described herein.

WHEREAS, Bank desires to enter into ATM Agreement for Leased Space with Merchant to operate and maintain automated teller machines, enclosures and related equipment ("ATMs") in the following locations ("Premises"):

1. Aurora City Hall Office ("City Hall") at 44 East Downer Place, Aurora, IL 60505;
2. Aurora Police Department, 1200 E. Indian Trail Road, Aurora IL 60505;
3. Route 25 Aurora Transportation Center ("ATC") at 233 N. Broadway, Aurora, IL 60505;
4. Route 59 Train Station, 1090 Route 59, Aurora IL 60504;
5. Phillips Park Golf Course, 1001 Hill Ave, Aurora, IL 60505.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, agree as follows:

### **1. SCOPE AND EXCLUSIVITY**

The City shall grant the Bank the exclusive right to install and operate one ATM in a prominent and visible location in each of the above listed locations. In addition, the Lessor may not install or permit any other entity to install on or about the Premises any point of sale device, point of purchase device, or any similar type of machine, or offer electronic fund transfer services by any other method at any of the same locations. The location of each ATM shall be agreed upon by the parties.

### **2. TERM**

The Bank shall, without cost to the City, maintain and service the ATMs at the Premises for a three (3) year period, subject to the rights of termination set forth in this lease. Such three (3) year period shall begin on the first of the month in January 2023. After the expiration of the three (3) year term, if any ATMs remain on City property, the Bank shall pay one hundred and fifty-dollars (\$150) per month, per ATM and this Agreement shall continue on a month-to-month basis.

### **3. OPERATION**

The City will provide, at its expense, electricity for operation of the ATMs.

### **4. RELOCATION**

Should the Bank wish to relocate the ATM during the term of the Lease, it shall be done only with the written approval of the City which approval shall not be unreasonably withheld, delayed or conditioned. All expenses associated with the relocation shall be borne by the Bank.



**5. COSTS**

The Bank shall pay all costs and expenses in connection with the servicing and maintenance of the ATM.

**6. PROPERTY**

The ATM and all related equipment, furnishings and signs are, and shall remain, the personal property of the Bank. Upon termination of this Lease for any reason, the Bank shall have the right to remove the ATM and such equipment, furnishings and signs and any other personal property of the Lessee.

**7. RENT**

The Lessee shall pay to the Lessor a monthly rent of one hundred and fifty dollars (\$150.00) per ATM, per month for the term of the lease. Total rent shall be seven hundred and fifty dollars (\$750.00) per month. Rent shall commence January 1, 2023 and be payable on the first day of each month thereafter during the term of this lease.

**8. TERMINATION**

Either party may, upon thirty (30) days written notice, terminate this Lease for the other party's failure to meet the specifications described herein or to provide the services stated herein, unless such failure is cured within the foregoing thirty (30) day period.

**9. OPTION TO TERMINATE**

For this term of this lease, the City hereby grants to the Bank the right and option to terminate this Lease by giving advance written notice to the Lessor in the event that other ATMs are located within 600 feet of the Premises, or if the transaction volume does not average one hundred (100) transactions per month during any six month period. In such event, the effective date of termination shall be thirty (30) days from the date the Lessor receives said notice or the date mutually agreed upon between the parties; provided, however, that such termination date shall occur after the first six (6) months of this lease.

**10. DEFAULT**

If default occurs in the performance of any provision hereof by any party, the defaulting party, after receiving written notice thereof from the other party, shall have thirty (30) days in which to cure said default. If the default is not cured within thirty (30) days, the other party may elect to terminate the agreement by providing written notice after the thirtieth (30<sup>th</sup>) day.

**11. REMOVAL OF EQUIPMENT ON TERMINATION**

Upon termination as set forth above, Lessee shall have, by the date of termination or upon expiration of the term of this lease, removed from the Premises the ATM and all related equipment, all of its trade fixtures, furnishings, signs and personal property and shall return the leased premises to its original condition, and shall have completed any repairs necessitated thereby.

**12. HOURS OF OPERATION**

The Bank shall use reasonable efforts to ensure that the ATM is operational during normal operating hours of the Premises and to comply with network uptime and is subject to Paragraph



12 of this lease. Lessee shall contract for a standard service contract on the equipment and service will be provided for the ATM Monday through Sunday 8 AM. to 8 P.M.

**13. SERVICE, MAINTENANCE AND CLEANING OF THE ATM**

The Bank shall be responsible for all costs associated with repairs, replacement parts and maintenance of the ATM. The City shall be responsible for cleaning the ATM and shall keep it in clean condition. The City agrees to promptly notify the Bank if ATM is broken or not operating.

**14. TITLE, ACCESS AND UTILITIES**

City warrants that it has authority to grant Bank undisturbed use of the premises for the term hereof as well as access for Bank, and Bank's invitees, for access of ingress and egress from and the ATM for purposes of maintenance, servicing, cleaning and inspection.

**15. FEES, LICENSES, TAXES**

The Bank shall pay all Local, State, Federal fees, licenses and truces in connection with servicing, maintenance, and operation of the ATM. The Bank will hold the City harmless for any of such taxes the Lessor becomes obligated to pay as a result of the Bank's failure to pay such fees, taxes or licenses. The City shall pay all fees, licenses and taxes (except Federal, State or Local income taxes of any kind, or any taxes related to the City's banking activities) levied or assessed against the Premises, including buildings and improvements thereon, except improvements erected by the Bank or for the Bank's benefit. The City will hold the Bank harmless for any such fees, licenses and taxes which the Bank becomes obligated to pay because the City's failure to pay such fees, licenses and taxes.

**16. SECURITY AND MAINTENANCE OF THE PREMISES**

The Lessor shall, at its expense, maintain the Premises in good repair and in a clean condition at all times. The Lessee shall assume responsibility for all loss or damage to the ATM, unless it is due to the negligence of the Lessor.

**17. INSURANCE**

The Bank shall secure, pay for and maintain insurance for the ATM, and such insurance will protect the Lessor from claims which may arise from operations under this Lease. Such Insurance policies shall be with companies and in such amounts and with such coverage as approved by City, whose approval shall not be unreasonably withheld, delayed or conditioned.

**18. HOLD HARMLESS AGREEMENT**

Each party agrees to defend, indemnify and save harmless the other party from and against any claims, suits or demands for injuries to or loss of life of any person or damage to property to the extent caused by the indemnifying party's negligent acts or omissions or breach of this Lease. In the event of any claims or injury, each party shall give the other party prompt notice thereof.

**19. ROYALTIES AND PATENTS**

The Bank shall pay all royalties and license fees which may be required to operate the ATM. The Bank shall defend suits or proceedings instituted against the City for the infringement of any patent rights arising out of the Bank's operation of the ATM, and shall save the City harmless against, and shall pay all awards of damages assessed and all costs of suits adjudged against the City, provided



the City gives the Lessee prompt written notice of the institution of any such suits or proceedings and control of the defense of such suits or proceedings.

**20. ACCESS**

The City shall provide the Bank with access to the ATMs at all reasonable times. Service personnel of the Bank will, at all times, be dressed in clean appropriate attire, and will observe all regulations of which they are informed in effect while on City property.

**21. NO PARTNERSHIP OR AGENCY**

It is hereby understood that nothing contained in this Agreement shall be construed by the parties hereto nor by any third party as creating the relationship of partnership, joint venture or agency between or among any of the parties hereto. The parties hereto agree that they are independent contractors, and that neither party is an agent of the other.

**22. OPERATION**

All operational rights use, and control of the ATM under this Lease shall be exclusively that of the Bank. The City's employees shall have only the same limited right of access to the ATM as the Bank grants to the general public.

**23. SIGNS**

In conjunction with the operation and maintenance of the ATM under this Lease, the Bank shall be entitled to display interior and exterior signs identifying the services available relating to the ATM and to the Bank's services. It is also agreed that signs shall be in accordance with not less than the signage requirements of the electronic funds transfer network, which requirements may be amended from time to time. The Bank shall have the sole responsibility to obtain any necessary sign permits or otherwise comply with other applicable laws, ordinances or regulations provided said signs comply with the City's ordinances and regulations. Nothing contained in this paragraph shall require the Bank to furnish space for a sign where all available space permitted by local ordinance or laws is being utilized. The City shall have the right to approve the design, style and appearance of any sign prior to its installation in order to assure that it will conform to the Lessor's standards for the general overall appearance of the Premises, and the Lessor agrees not to unreasonably withhold or delay approval.

**24. COMPLIANCE WITH LAWS**

The ATM and equipment operated hereunder shall be operated in accordance with all applicable laws, rules, and regulations. In the event that any court decision, regulation or regulatory action, or any changes in any law, ruling, or regulation or interpretation thereof governing operation of ATMs would, in the opinion of counsel for the Lessee make the continuation of this lease or any addendum thereto illegal or subject the Lessee to any penalty, fine or regulatory action, the Bank may terminate this Lease by providing ten (10) days written notice to the City.

**25. DESTRUCTION OR CONDEMNATION**

In the event of destruction or damage to any of the Premises, either in whole or in part, which would prevent the use or occupancy of any of the Premises for the intended purpose of this Lease, then either party may terminate this Lease with ten (10) days written notice to the other party. In the event that any zoning or land use classification arises and becomes effective as would in the



reasonable exercise of either party's judgment, prevent the use or occupation of any of the Premises for the intended purpose under this Lease, then either party may terminate this Lease by providing ten (10) day's written notice to the other party.

**26. WAIVER**

The failure of either party to insist upon strict performance of any of the covenants or conditions of this Lease to be kept and performed by the other party, or the failure to exercise any right conferred upon either party hereunder in the event of any breach of the terms and provisions hereof shall not be construed as a waiver or relinquishment of its right to require strict compliance thereafter by the other party with all the covenants, agreements and conditions hereat: or of its right to exercise any such right to declare this Lease terminated due to such breach.

**27. SERVICE MARKS**

Neither party may use the service marks or name of the other party in any communication with third parties without the prior written consent of the other party.

**28. ASSIGNMENT AND SUBLETTING**

This lease may not be assigned in whole or in part without the prior written consent of the City in each instance which consent shall not unreasonably be withheld. The City will not assign its rights or obligations under this Lease without the written consent of the Bank, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party has the right to assign this lease, or its rights hereunder, in whole or in part, without the other party's consent, as a result of or pursuant to, a (i) transfer to any entity or person, directly or indirectly, controlling or under common control with such party, and (ii) a merger or consolidation of such party, or a purchase and assumption of such party's assets and liabilities.

**29. SUCCESSORS**

The terms and conditions of this Lease shall be binding upon and inure to the benefit of the successors and assigns (as such assigns are permitted by Section 28 hereof) of each of the parties, provided that this Lease or any modification or alternation thereof shall not be binding until such alternation or modification has been reflected in a document duly executed by all parties to this Lease.

**30. SEVERABILITY**

The terms and provisions of this Lease shall be deemed severable, and in the event that any term or provision of this Lease is deemed or held to be invalid, illegal, or unenforceable, the remaining terms and provisions hereof shall nevertheless continue and be deemed to be in full force and effect. The headings in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.

**31. CHOICE OF LAW**

This Agreement shall be construed, and the rights and obligations arising hereunder, shall be determined in accordance with the laws of State of Illinois.



**32. FORCE MAJEURE**

No party hereto shall be liable for any delay or failure in performance of its obligations hereunder where such delay or failure results from Acts of God, natural disasters, acts of war, civil disorders, labor disputes or computer or equipment failures or malfunctions ("force majeure"), provided, however, that if a force majeure event prevents a party's performance hereunder for a period of ninety (90) days then the other party, on thirty (30) days prior written notice, may terminate this Agreement.

**33. NOTICES**

All notices to be sent under this Lease shall be sent to the City and to the Bank at the addresses set forth and to the individuals below:

**To City:**

Chief Financial Officer  
City of Aurora  
44 Downer Place  
Aurora IL, 60505  
[FinDept@aurora.il.us](mailto:FinDept@aurora.il.us)

**With a Copy to:**

Corporation Counsel  
City of Aurora  
44 Downer Place  
Aurora IL, 60505  
[LawDept@aurora.il.us](mailto:LawDept@aurora.il.us)

**To the Bank:**

Director of Operations  
Old Second National Bank  
37 S. River St.  
Aurora, IL. 60506  
[nweaver@oldsecond.com](mailto:nweaver@oldsecond.com)  
[rmcginnis@oldsecond.com](mailto:rmcginnis@oldsecond.com)

**With a Copy to:**

Bank Legal Team  
Old Second National Bank  
37 S. River St.  
Aurora, IL. 60506

IN WITNESS WHEREOF, the Parties hereto have executed this Lease as of the date first above written.

LESSOR:

**CITY OF AURORA,**  
an Illinois Municipal Corporation

BY: 

Richard C. Irvin, Mayor

ATTEST: 

Jennifer Stallings, City Clerk

LESSEE:

**OLD SECOND BANK,**  
a Banking Corporation

BY:  12/5/22

Nick Weaver, Director of Operations

ATTEST:  12/5/22

Rhonda McGinnis, Operations Administration

