



## Legislation Text

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**File #:** 16775, **Version:** 1

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### **Fiscal Note**

No expenditure required.

### **Title**

Authorizing the execution of an Agreement for Installation, Operation, Maintenance and Repair of Photovoltaic Lighting System with Madison Gas and Electric Company for the installation of a demonstration photovoltaic lighting system in Thut Park, located at 2630 Nana Lane.

### **Body**

WHEREAS, Madison Gas and Electric Company ("MGE") desires to install a photovoltaic lighting system ("PV Lighting System") at Thut Park, located at 2630 Nana Lane; and

WHEREAS, City Parks staff is desirous of having a PV Lighting System installed at Thut Park as it will provide a source of illumination in the Park at no cost to the City; and

WHEREAS, the PV Lighting System will be a clean renewable lighting source and will serve to demonstrate MGE's and the City's commitment to renewable energy technology; and

WHEREAS, MGE and Parks Division staff and Office of Real Estate Services staff have negotiated terms and conditions for an agreement to allow for the installation, repair and maintenance of the PV Lighting System by MGE.

NOW, THEREFORE, BE IT RESOLVED that the Common Council hereby authorizes the Mayor and City Clerk to enter into an agreement ("Agreement") with Madison Gas and Electric Company ("MGE") for the installation, operation, maintenance and repair of a photovoltaic lighting system ("PV Lighting System") in Thut Park, located at 2630 Nana Lane and depicted on attached Exhibit A, on the following general terms and conditions:

1. The location of the PV Lighting System within Thut Park shall be generally as depicted on attached Exhibit B. Prior to installation, MGE and the City shall mutually agree on the plans and specifications for the PV Lighting System.
2. MGE shall be the sole and complete owner of the PV Lighting System and all components thereof, including renewable energy credits. During the term of the Agreement, MGE shall have the right to install, operate, maintain and repair the PV Lighting System upon the terms and conditions set forth in the Agreement.
3. The initial term of the Agreement shall be for 10 years. At the expiration of the initial term of the Agreement, MGE shall have the option to: (a) extend the Agreement for a single additional term of 5 years; (b) remove the PV Lighting System and restore the property on which it was located (the "Property") to match the condition at the time of installation; or (c) offer the PV Lighting System for sale to the City at its then depreciated value. If the City declines to purchase the PV Lighting System, then MGE shall retain the right to exercise either of the remaining options.
4. MGE shall have the right to erect and maintain, at its sole cost, an informational/educational display describing the operation of the PV Lighting System, which display shall be located immediately adjacent to the PV Lighting System. The size, design, location and contents of the display, as well as maintenance standards therefore, shall be subject to the City's prior written approval.

5. The City and MGE shall promptly report to each other any problems with the PV Lighting System or its components that come to their attention. MGE shall have the right, upon reasonable advance notice to the City, to make any necessary repairs to the PV Lighting System; provided, however, that in making such repairs, MGE, its authorized agents and employees shall use reasonable care to avoid undue interference or disruption to the City.
6. The City shall not: (a) plant any vegetation whose growth or care will interfere with the operation of the PV Lighting System; (b) install or construct any structure that will impair the functioning of the PV Lighting System or damage or shorten the useful life of such PV Lighting System; (c) take any other action that would tend to damage, impair, debilitate, shorten the useful life of, or otherwise work to the detriment of the PV Lighting System. The City shall provide prior notice to MGE of any intended repairs or maintenance to the Property that would have the potential to adversely impact the PV Lighting System and agrees to coordinate any such repairs or maintenance with MGE. The City's repairs or maintenance will be carried out in a manner that will avoid damage to or undue interference with the PV Lighting System.
7. The Agreement shall terminate upon the earliest to occur of the following: (a) the expiration of the initial term (or if extended, the extended term) of the Agreement; (b) the removal of the PV Lighting System in accordance with the terms of the Agreement; (c) the purchase of the PV Lighting System by the City from MGE; (d) at the election of the City, at its sole option, upon 180 days prior written notice given to MGE; (e) at the election of MGE, at its sole option, upon 180 days prior written notice given to the City; (f) upon MGE's election to terminate the Agreement following an event of default by the City; or (g) upon the City's election to terminate the Agreement following an event of default by MGE.
8. Provided the City does not elect to purchase the PV Lighting System, either the City or MGE shall be responsible for the removal of the PV Lighting System and restoration of the Property to match its preinstallation condition upon the expiration, termination, or event of default of the Agreement and any extension thereof, as provided below.
  - a) If the Agreement is terminated at any time due to an event of default by the City, or if the City terminates the Agreement at its election at any time during the first year of the term, then the City shall pay for the costs of removal of the PV Lighting System and restoration of the Property to match its preinstallation condition and shall return the PV Lighting System to MGE in a condition which it can be reused.
  - b) If the Agreement is terminated at any time due to an event of default by MGE, or if MGE terminates this Agreement at its election, or if the City terminates the Agreement at its election effective at any time after the first year of the term, then MGE shall pay for the costs of removal of the PV Lighting System and restoration of the Property to match its preinstallation condition.
9. The City shall pay the real property and personal property taxes, if any, pertaining to the Property and the City's personal property located thereon. MGE shall pay any tax assessed against the PV Lighting System by the State of Wisconsin Department of Revenue under Chapter 76 of the Wisconsin Statutes.
10. MGE shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and reasonable attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, or caused by the negligent acts or omissions of MGE and/or its officials, officers, agents, employees, assigns, guests, invitees, or

subcontractors, in the performance of the Agreement, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, and employees. Additionally, MGE shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the City's Risk Manager: bodily injury, death and property damage of \$1,000,000 per occurrence. The policy or policies shall name the City as an additional insured. As evidence of this coverage, MGE shall furnish to the City a certificate of insurance on a form provided by the City.

Description of the Property:

The following described property, being located in the Northwest ¼ of Section 30, T7N, R10 E, City of Madison, Dane County, Wisconsin:

Lots 6 and 7 Frazier's Subdivision of Outlot 2 Raywood Heights; and

Lots 1 and 2, CSM 12335; and

All of Lots 6-10, Block 2, F.A. Bridge Replat # 2 of Outlot No. 3, Raywood Heights; and

That part of Lots 1-5, Block 2, F.A. Bridge Replat # 2 of Outlot No. 3, Raywood Heights, located Northwesterly of Lot 2, CSM 12335; and

Part of Block 3 of F. A. Bridge Replat #2 of Outlot No. 3, Raywood Heights, bounded on the North by the South line of block 2 of said Replat, bounded on the West by the East line of Lot 1, CSM 12335, and bounded on the Southeast by the Northwesterly line of Lot 2, CSM 12335; and

That part of vacated Berry Lane extending from the West line of Lot 10, Block 2 of said Replat to the Northwesterly line of Lot 2, CSM 12335.

Tax Parcel No. 251-0710-302-0501-9