



## Legislation Text

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**File #:** 45508, **Version:** 2

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### **Fiscal Note**

The proposed resolution authorizes a Purchase and Sale Agreement with Madison Gas and Electric Company for property for the construction of the Capitol East District Parking Structure. The anticipated purchase price is \$1,200,000. This price is based on the following terms and conditions:

1. Purchase Price. The City will pay MGE \$16/square foot for the Property.

2. Size of Property. The size of Property will be between 60,000 and 80,000 square feet. The exact size and location of the Property will be as mutually agreed by City and MGE.

The purchase will be funded by the General Land Acquisition Fund, the current balance of the fund is approximately \$2.2M. Should this resolution be approved, the remaining balance would be \$1M.

The funding sources for the total project cost is \$16 million as outlined in RES-16-00837 (Legistar #44762) are as follows:

- \$7 million Tax Increment Financing (TIF) - supported Borrowing
- \$5 million General Fund-supported General Obligation Borrowing
- \$3 million Parking Utility Cash Reserves
- \$1 million General Land Acquisition Fund

### **Title**

SUBSTITUTE Authorizing the execution of a Purchase and Sale Agreement with Madison Gas and Electric Company for property at the intersection of South Livingston Street and East Main Street; and, authorizing the execution of a Memorandum of Understanding with Madison Gas and Electric Company regarding future municipal uses within the Capitol East District.

### **Body**

WHEREAS the Common Council approved RES-16-00837 (Legistar #44762) on November 1, 2016, which contemplates the purchase of property at the intersection of South Livingston Street and East Main Street from Madison Gas and Electric Company (MG&E) for the construction of a Capitol East District Parking Structure; and,

WHEREAS the Parking Structure will be owned and operated by the City of Madison Parking Utility; and,

WHEREAS the approximately 600 stall Parking Structure will accommodate both the general public and employees of the nearby Spark and Cosmos projects; and,

WHEREAS the City of Madison has negotiated with MG&E for the purchase of a portion of their property to locate the Parking Structure as further articulated below; and,

WHEREAS MG&E's willingness to sell this property reflects a desire to help re-position the Capitol East District to a vibrant mixed-use neighborhood; and,

WHEREAS MG&E recognizes the importance of the municipal uses already found within the Capitol East District, there exists a desire to not see new municipal uses moved to the District that would preclude the

development of a vibrant mixed-use neighborhood; and.

WHEREAS the City and MG&E negotiated terms of said purchase as memorialized in a Letter of Intent executed on November 8, 2016.

NOW THEREFORE BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement between the City and MG&E on substantially the following terms and conditions:

**1. Purchase Price.** The City will pay MGE \$16/square foot for the Property.

**2. Size of Property.** The size of Property will be between 60,000 and 80,000 square feet, the exact size and location of the Property will be based on the preliminary design of the parking structure and as mutually agreed by City and MGE.

**3. Deed Restriction.** The Property being conveyed will be subject to a deed restriction allowing the Property to be used as a parking structure open to the public or other use as approved by MGE. The deed restriction will be effective for as long as MGE maintains any utility operations or ownership of real estate within its existing footprint. A map showing MGE's existing footprint is attached hereto and as Attachment 1. The form and substance of the deed restriction shall be acceptable to MGE and shall include a map of MGE's existing footprint. The deed restriction will be recorded with the Dane County Register of Deeds. MGE's existing footprint is limited to the following:

Blocks 122-124, 127, 130-132, 145 and 146 and vacated Railroad St. from S. Paterson St. to S. Blount St. of the Original Plat of Madison, and Blocks 174, 186 and 198, all of vacated S. Few St. between Railroad St. and E. Main St., and the southeastern 41.9 feet of vacated E. Main Street St. from S. Baldwin St. southwest to the northeast property line of Lot 6 of Block 186 of Farwell's Replat of the Original Plat of Madison.

**4. Right of First Refusal.** The City shall grant MGE a right-of-first refusal on any sale or conveyance of all or any portion of the Property by the City for as long as MGE maintains any utility operations or ownership of real estate within its exiting footprint (as set forth above). The form and substance of the right-of-first refusal shall be acceptable to MGE and shall include a map of the MGE's current footprint. The right-of-first refusal will be recorded with the Dane County Register of Deeds.

**5. Right of Reentry.** If permanent construction of the parking structure is not commenced within one (1) year of closing (the "One Year Period"), upon the request of MGE, the City will convey the Property back to MGE free and clear of liens and encumbrances, other than those existing at the time of the sale to the City. MGE shall return the City's purchase price, less closing costs. For purposes of this section, commencement of permanent construction means the commencement or installation and construction of the parking structure on the Property such as the pouring of footings, the installation of pilings, the construction of columns, or the construction of any vertical permanent portion of the parking structure. Commencement of permanent construction does not include: land preparation such as clearing, grading, filling, or excavation for a basement, footings, or foundations; erection of temporary forms; or the inspection, testing, or environmental remediation of the Property. The right of reentry will be in a writing, acceptable to MGE, and recorded with the Dane County Register of Deeds. In the event the parking structure is commenced within the One Year Period, MGE will record a waiver of its right of reentry with the Dane County Register of Deeds.

**6. Contingencies.** The closing of this transaction will be contingent upon, and shall not occur until after, or simultaneously with, the successful closing(s) of the Cosmos Project (a/k/a City of Madison/Otto Gebhardt/American Family Insurance/StartingBlock transaction(s)), the issuance of land use approvals for the parking structure and the Cosmos Project, the approval of the parking structure design by ATC, delivery to the

City of a title commitment for an ATLA owner's title insurance policy in the amount of the purchase price, and approval of the transaction by the City of Madison Common Council (the "Contingencies"). In the event all the Contingencies are not fulfilled by June 30, 2017 or are not waived by both MGE and City by June 30, 2017, this transaction and any related definitive agreement shall, at the option of either MGE or City, be null and void and of no further force or effect.

**7. Impact of Parking Structure.** The City shall enter into an MOU with MGE regarding the City's future municipal uses within the Capitol East District, any anticipated retail uses in the parking structure, access issues related to or arising from the parking structure, and the impacts of any of these on MGE's operations and adjacent properties.

The MOU language regarding future municipal uses within the Capitol East District shall include terms similar to the following:

For the purpose of this MOU, the Capitol East District is defined by the following boundaries: Blair Street, First Street, Dayton Street, and Wilson Street/Capitol City Trail.

The Madison Water Utility, Madison Metro, and Madison Parks will continue to maintain and invest in their facilities within the Capitol East District, including expansion of Central Park. It is the City's intent to relocate the Fire Maintenance Facility and Fleet Services to a location outside of the Capitol East District. The Madison Parking Utility may construct future public parking structures within the Capitol East District, the City may construct Madison Public Market District facilities, and the City may renovate the Madison Metro Transit Facility (minor expansion is possible). The City will not plan other new City uses within the Capitol East District without consulting MGE. The City will take actions that will continue to encourage private, taxable development within the Capitol East District.

Notwithstanding the foregoing, the City shall be entitled to take any action regarding its public utility (water utility, sanitary sewer utility, storm water utility) or right-of-way infrastructure within the District, including, but not limited to, improving, maintaining, expanding, vacating or abandoning said facilities and infrastructure. In addition, the sale of any City owned land shall be subject to the requirements of MGO (currently MGO Sec. 8.075) and Common Council approval at the time of the sale.

The City shall be free to take any action contrary to this MOU that is determined to be reasonably necessary for the health, safety and welfare of the public.

**8. Paterson Street and Livingston Street Access.** The City shall cooperate with MGE to clear title between MGE and the City at the Madison Water Utility's operations center located at 110 S. Paterson St. Upon application by MGE, the City shall allow MGE access to its property from Paterson Street, and cooperate with MGE generally to obtain two access points to its property on Paterson Street and two access points to its property on Livingston Street.

**9. As Is.** The Property will be sold to Buyer "as is".

**10. Easements.** The Property will be sold subject to all existing easements (including the easement held by the American Transmission Company ("ATC") for its transmission facilities). The City acknowledges that: (a) ATC may wish to enter into separate easements for its facilities with Buyer and MGE; and (b) Buyer may need ATC's approval related to any construction that affects ATC's easements or facilities.

**11. Environmental Due Diligence.** MGE has provided the City with copies of the Phase I and Phase II reports for the Property and MGE's internal release reports from 1997-2016. In accordance with the Letter of Intent that preceded this resolution, MGE will allow the City to conduct additional environmental inspections of the property until March 4, 2017 (one-hundred and twenty (120) days following the acceptance

of the Letter of Intent, which occurred on November 4, 2016)

. Such inspections shall be limited to the near surface (0-2 feet) for PCBs in areas reasonably acceptable to MGE. MGE shall cooperate with the City's testing efforts, including making the Property available to the City and the City's contractors as specified in this Letter. The City's written environmental inspection protocol shall be reasonably acceptable to MGE and shall address the number and physical location of proposed samples, the depth of proposed samples, and the analytical method proposed to analyze samples. The City shall provide its proposed written environmental inspection protocol to MGE for review and approval at least 10 business days before the City intends to start inspecting and/or testing the Property. MGE shall raise any objections to the City's proposal prior to the commencement of inspection or testing. Prior to closing, MGE and the City will work together and with WDNR to address the ongoing investigation of the site.

**12. Environmental/Remediation Costs.** The City will remediate the Property to the extent required by the Wisconsin Department of Natural Resources and will be responsible for all of the Property's remediation upon acquisition. MGE will be relieved of liability for the Property as of the closing date. MGE will contribute up to \$85,000 to the City for environmental remediation costs which will be memorialized in a separate agreement between MGE and the City on terms acceptable to MGE. If, prior to closing, the city conducts additional site investigation and discovers that remediation costs may exceed \$500,000 total, the City shall have the option to terminate the definitive purchase agreement.

**13. Distributed Generation.** MGE shall retain the right to install and operate distributed generation facilities (such as solar) on the top and/or roof of the parking structure. Documentation memorializing this retained right will be in a form and substance acceptable to MGE. Actual installation of distributed generation facilities shall be MGE's cost on terms agreeable to the Parties.

**14. EV Charging Stations.** MGE shall retain the right to install and operate electric vehicle charging stations in the parking structure. Documentation memorializing this retained right shall be in a form and substance acceptable to MGE.

**15. Structure Design.** The City shall coordinate discussions between MGE, the City, and the City's design consultant for the parking structure so that the ultimate design takes into account MGE's distributed generation or EV charging station design needs for the structure, or any other specific concerns that may arise during the planning process. The apportionment of any incremental cost to the parking structure for accommodating MGE's design needs shall be resolved by the City and MGE before the plans for the parking structure are finalized. In the absence of any such agreement, the City shall retain full authority over the design of the structure.

**16. Land Division.** The Property to be conveyed will need to be created by Certified Survey Map prior to closing. Buyer will be responsible for the cost associated with preparation, approval, and recording of the Certified Survey Map. The Certified Survey Map will be prepared by a surveyor acceptable to MGE. The Certified Survey Map shall be in a form and substance acceptable to MGE. The Certified Survey Map will be recorded with the Register of Deeds prior to closing but at a time and date acceptable to MGE.

**17. Closing Costs.** The Buyer shall be responsible for any and all closing costs.

**18. Release of Trust Indenture.** The Property is encumbered by MGE's Trust Indenture. Buyer acknowledges that MGE will need to have the Property released from the Trust Indenture prior to closing.

**19. No Brokers.** Buyer and Seller each warrant and represent for itself that neither has engaged a broker and that no party is due a commission or fee as a result of this transaction.

**20. Cooperation and Exclusive Dealings.** While this Letter is effective, Buyer and Seller will proceed

in good faith in the negotiation and preparation of a purchase agreement and associated documents relating to the sale of the Property as contemplated by this Letter. Additionally, Buyer and MGE will in good faith take other actions necessary to consummate the transaction contemplated by this Letter. While this Letter is effective, Seller shall not offer to sell the Property or accept an offer to sell the Property to a person or entity other than Buyer.

**21. Access to Property.** While this Letter is effective, Seller shall allow Buyer reasonable access to the Property during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, for the sole purpose of developing plans and specifications for the parking structure, including performing soil testing to determine the suitability and engineering needs of the site, and conducting the environmental inspections as set forth above. Buyer shall indemnify, defend, and hold MGE and MGE's employees, officers, consultants, and agents harmless from and against all claims, damages, losses, forfeitures, penalties, and expenses including, but not limited to, reasonable attorneys' fees, and court costs arising out of or resulting from Buyer's access to the Property, including those related to injury or damage to person or property and injury resulting in the death of any person or persons. This indemnification obligation shall survive the expiration or termination of this Letter. Buyer shall not have the right to otherwise inspect or test the Property, without MGE's express written permission.

**22. Closing Date.** This transaction shall close by no later than June 30, 2017, or some other date mutually agreed to by the City and MGE (the "Closing Date"); and,

BE IT FURTHER RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Memorandum of Understanding between the City and MG&E regarding future municipal uses within the Capitol East District with terms similar to those outlined in Paragraph # 7 above; and,

BE IT STILL FURTHER RESOLVED, that, pursuant to APM 1-1, the Common Council approves indemnification of Madison Gas and Electric as set forth in the Purchase and Sale Agreement in order to allow the City access to the Property prior to the Closing Date to plan the parking structure and conduct environmental inspections of the Property; and,

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to execute, deliver, and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution all in a form to be approved by the City Attorney.