



## Legislation Text

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**File #:** 02041, **Version:** 2

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### Fiscal Note

This lease for a warehouse facility requires the City to pay an annual rent of \$4.00 per square foot, plus all utility costs and maintenance expenses, real estate taxes, and fire and extended coverage insurance for an estimated annual cost of \$85,000. Base annual rent is subject to a 3% increase every year. The Police Department has funds available for evidentiary vehicle storage as part of their towing services budget. The Police Department anticipates an annual savings of \$55,000 from this lease agreement. These funds will be applied toward a more efficient means of disposing of vehicles, which will save significant staff time now devoted to vehicle disposition. Future acquisition of the leased property under the option to purchase will require specific Common Council approval at a later date.

### Title

SUBSTITUTE - Authorizing the execution of a lease and an option to purchase a warehouse building located at 2434 Vondron Road for the storage of evidentiary vehicles associated with Madison Police Department operations. 16th Ald. Dist.

### Body

Whereas, the Madison Police Department (MPD) is considering ways of reducing costs for the storage of evidentiary vehicles; and

Whereas, evidentiary vehicles are currently being stored in privately operated facilities; and

Whereas, it has been determined that leasing warehouse space by MPD will be less expensive than continuing paying fees for storing such vehicles in privately operated facilities; and

Whereas, the leasing of warehouse space by MPD will also provide for the storage of recovered bicycles and other miscellaneous items; and

Whereas, a warehouse facility at 2434 Vondron Road meets MPD's requirements for storing vehicles and bicycles and is available for lease with an option to purchase the facility at a later date; and

Whereas, the terms of the lease and potential purchase have been negotiated with the owner; and

Whereas, based on the proposed estimated annual rent and operation costs of \$ 85,000 for 2434 Vondron Road and fees paid for privately operated facilities for 2003 and 2004, the estimated annual savings gained by the City through the proposed lease arrangement would be approximately \$ 55,000.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease (the "Lease") with Gail and Glenn Phippen (Owners) subject to the following terms and conditions:

1. The term of the lease shall be three (3) years effective on November 1, 2005 (the "Commencement Date") and ending on October 31, 2008. The Leased Premises shall consist of the building, containing approximately 12,300 square feet, and land located at 2434 Vondron Road, together with an easement for driveway purposes across the Owners' adjacent property at 5114 Pflaum Road. The Leased Premises are depicted on attached Exhibit A.
2. The City shall have one (1) option to renew the Lease term for an additional three (3) year period upon notice being given to the Owners on or before September 1, 2008.
3. The base rent ("Base Rent") payable during the first Lease year shall be at the rate of \$4.00 per square foot per annum, calculated based on approximately 12,300 square feet. Throughout the original Lease term and the renewal term, if any, the Base Rent shall increase by 3% annually effective as of the anniversary of the Commencement Date.

4. The Lease shall be a triple net lease. For purposes of the Lease, the term "triple net lease" means the City shall pay to the Owners' Base Rent, plus real estate taxes, utilities and the Owners' cost of fire and extended coverage insurance. To assist the Owners with their initial cash outlay for the work described in Paragraph 9, the City shall pay the first two (2) months' Base Rent and triple net charges at the time of Lease execution. Commencing in the third month of the Lease term, monthly Base Rent and triple net charges shall be payable in equal monthly installments on or before the first day of each month.
5. Execution of the Lease is subject to the City, at its cost, obtaining a Phase 1 Environmental Site Assessment acceptable to the City.
6. Except as may be covered by the Owners' insurance policy for the property, the City shall keep and maintain the interior of the Leased Premises in good order and condition, including all partitions, doors, door operating devices, glass, floor coverings, fixtures, heating, air conditioning, plumbing and electrical equipment and appurtenances whether installed or owned by the Owners or the City, and shall do such periodic maintenance of the Leased Premises, including such periodic painting, touch-up painting, decorating and cleaning of the interior of the Leased Premises as may be required. The City shall also be responsible for washing all windows, cleaning of the Leased Premises and maintenance and repair of any personal property installed in the Leased Premises.
7. The Owners shall keep the foundations; roof; sewer system; concrete floors, structural portions of the walls; and all other structural members, both interior and exterior, of the Leased Premises, in good order, condition and repair, and shall make any repairs/replacements and do such painting of the exterior as may be required. The term "repair" shall include replacements or renewals when necessary and all such "repairs" shall be equal in quality and class to the original work. Notwithstanding the foregoing, the City shall be responsible for the cost and expenses of repairs/replacements required by reason of acts or omissions of the City, the City's employees, agents, invitees, vendors, licensees or contractors.
8. The Owners shall maintain throughout the term of the Lease the insurance coverages: A policy of comprehensive fire, extended coverage, vandalism, malicious mischief and other endorsements deemed advisable by the Owner insuring the Leased Premises and all appurtenances thereto (excluding the City's inventory, trade fixtures, furniture, furnishings, equipment and personal property) for the full insurable replacement value thereof, with such a deductible not to exceed \$5,000. The City shall be solely responsible for carrying personal property insurance sufficient to cover the loss or damage to the City's personal property.

Additionally, the Owner shall carry commercial general liability insurance, including contractual liability with no less than the following limits of liability as may be amended, from time to time, by the City's Risk Manager: bodily injury, death and property damage of \$1,000,000 combined single limits per occurrence. The policy or policies shall name the City as an additional insured. As evidence of these coverages, the Owner shall furnish to the City a certificate of insurance on a form approved by the City.

9. The Owners shall, at their sole cost and expense, cause the following building improvements to be made to the Leased Premises prior to the Commencement Date:
  - a. Installation of ~~one (1) pole-mounted~~ two (2) exterior security lights with photo sensor operation mounted on one (1) pole in the parking lot area. The light will be faced toward the building at a location approved by the City.
  - b. Installation of one overhead door in the wall separating the original structure and the addition to allow access from the original building to the outdoor fenced area.
  - c. Enlargement of the existing fenced area as close to Vondron Road as zoning permits. Additional fencing materials shall match the existing fencing materials.
  - d. Installation of a gate ten feet (10') wide at the southeast corner of the enlarged fenced area.
  - e. Installation of an eight foot cyclone fencing and gate system in the east storage area along the north wall, to

serve as an enclosure for the bicycles.

10. Upon the expiration or termination of the Lease, the City shall remove all personal property from the Leased Premises, and the Owner shall own all improvements made by the City to the Leased Premises.
11. The City shall have the right to purchase ("Option to Purchase") the Leased Premises and the Owner's additional land located at 2434 Vondron Road and 5114 Pflaum Road (collectively, the "Property") effective at the end of the first year of the Lease term or at the end of the 18th month of the Lease term. The Property is depicted on attached Exhibit B. Notice of the City's exercise of the Option to Purchase shall be given to the Owner on or before July 31, 2006, or on or before January 31, 2007, respectively. If the City exercises its Option to Purchase, closing shall occur within four (4) months from the date of such notice, under the following terms and conditions:
  - a. The total purchase price of the Owners' interest in the Property shall be \$630,000, payable in cash at closing.
  - b. Subject to the City, at its cost, obtaining an independent appraisal acceptable to the City. The appraisal shall support a Property value of at least \$ 630,000.
  - c. The Owners shall provide to the City at the Owners expense at least ten (10) business days prior to closing a commitment from a title insurance company licensed in Wisconsin to issue title insurance in the amount of the total purchase price upon the recording of proper documents.
  - d. Closing shall take place at the offices of the title company providing the title insurance.
  - e. The Owners agree to execute and deliver to the City at closing a Warranty Deed conveying to the City: fee simple title to the Property free and clear from all liens and encumbrances, excepting municipal and zoning ordinances, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, taxes levied in the year of closing and all subsequent years, and exceptions to title previously approved by the City.
  - f. The City shall pay all recording/filing fees except that the Owner shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for herein.
  - g. The Owners shall be responsible for any and all special assessments, area assessments, connection charges, interceptor charges or any other charges payable to any municipality or utility with regard to the Property as of the date of closing.
  - h. The Owners shall pay all real estate transfer taxes payable pursuant to Section 77.25, Wisconsin Statutes, if any.

BE IT FURTHER RESOLVED that the Lease shall also include the following non-standard indemnity clause:

The Owners shall be liable to and hereby agree to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and 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 there from, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Owners and/or their officials, officers, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Lease.

BE IT STILL FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute any and all additional documents that may be required to complete this transaction.