



## Legislation Text

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**File #:** 57995, **Version:** 1

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### **Fiscal Note**

The proposed resolution authorizes execution of a lease for the use of City-owned property for private parking purposes. Annual rent payable for the first lease year shall be approximately \$5,980.20 and deposited into the General Fund. Rent shall be subject to a three percent annual increase.

### **Title**

Authorizing the Mayor and City Clerk to execute a lease with Mullins Family, LLC and Washington Gilman Limited Partnership, allowing for the use of portions of City-owned transportation corridor properties located at 94 S Dickinson St. and 189 S Baldwin St. and a part of inactive E. Main St. right-of-way for private parking purposes. (6th A.D.)

### **Body**

WHEREAS, the City owns properties addressed as 94 S. Dickinson St. and 189 S. Baldwin St., as well as an inactive portion of E. Main St. right-of-way, all as depicted on attached Exhibit A (collectively, the "City's Property"); and

WHEREAS, Mullins Family, LLC, and Washington Gilman Limited Partnership (collectively, the "Lessee"), own property near the City's Property, as depicted on Exhibit A and legally described in Exhibit B ("Benefitting Property"); and,

WHEREAS, the Lessee currently leases, for private parking purposes, the portions of the City's Property depicted and described in Exhibit C ("Leased Premises"), as Assignee to that certain lease dated September 26, 1994, and recorded September 28, 1994, with the Dane County Register of Deeds as Document No. 2634741; as amended by First Amendment to Lease dated April 6, 2011, and recorded April 7, 2011, as Document No. 4756520; and as further amended by Assignment of Lease dated June 7, 2016 and recorded July 7, 2016, as Document No. 5248573; and as further amended by First Notice of Lease Renewal dated July 5, 2016, and recorded July 12, 2016 as Document No. 5249942; and as further amended by Second Notice of Lease Renewal dated March 26, 2018 and recorded March 27, 2018 as Document No. 5397929 (collectively, "Original Lease"); and

WHEREAS, in accordance with the terms of the Original Lease, the Lessee has improved the Leased Premises with private parking lot facilities which benefit and serve the Benefitting Property; and

WHEREAS, the Original Lease has no remaining renewal options and will expire on June 30, 2020; and

WHEREAS, the Lessee desires to enter into a new lease for the Leased Premises to allow for the continued use of the Leased Premises for private parking purposes; and

WHEREAS, City of Madison Engineering Division staff, the City Attorney's Office, and the Risk Manager have all reviewed and approve of the new Lease.

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

1. With respect to the Lessee's interest in the Original Lease, the Original Lease shall automatically terminate effective as of midnight of the day immediately preceding the "Effective Date" of the Lease.

2. The City's Property and Benefitting Property are depicted on attached Exhibit A; the Benefitting Property is described on attached Exhibit B; and the Leased Premises is described and depicted on Exhibit C. The Leased Premises is improved with asphalt pavement and consists of approximately 19,934 sq. ft.
3. The Lease shall be for a term of four (4) years beginning on July 1, 2020. The Lessee will have two (2) successive options to extend the Lease for additional terms of two (2) years each, unless otherwise terminated in accordance with the provisions of the Lease.
4. Annual rent payable to the City during Lease Year 1 shall be \$5,980.20. Beginning on the first anniversary of the Effective Date of the Lease and on each anniversary date thereafter, including any renewal period(s), the annual rent shall increase by three percent (3%) per year compounded annually.
5. The Lessee shall use the Leased Premises for private parking purposes to serve the Benefitting Property. The Leased Premises shall be used exclusively by the Lessee and the tenants, customers, vendors, guests and invitees of the Lessee.
6. The following special conditions shall be a part of the Lease:
  - a. No buildings or other structures shall be erected upon the Leased Premises.
  - b. The Lessee shall in no way encumber, or allow to be encumbered, the City's title to the Leased Premises.
  - c. The Lessee shall immediately provide written notice to the City of any foreclosure action against the Benefitting Property.
  - d. The Lessee shall supervise, regulate and maintain the Leased Premises to permit parking only on paved parking stalls. The Lessee shall prohibit and prevent parking by anyone on any unimproved area of the Leased Premises or the City's Property.
  - e. The Lease does not address or otherwise authorize the use of the portions of the Improvements that are located outside of the Leased Premises on land owned by the Wisconsin Department of Transportation.
7. The Lessee shall at any time, upon notice to the City, be permitted to sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey its interest in the Lease and the Lessee Improvements located on the Leased Premises (which actions are collectively referred to herein as "Transfers"), but only if such Transfer is made simultaneously with the Transfer of the Abutting Property to the same purchaser or transferee of the Lease and the Lessee Improvements located on the Leased Premises. Furthermore, foreclosure of any such mortgage, pledge or encumbrance shall also be a Transfer permitted hereunder, subject to the restriction that the leasehold interest shall not be severed from the ownership of the Benefitting Property. All such Transfers shall be subject to all of the terms of the Lease, and all applicable statutes, laws and ordinances. Any purchaser or transferee of all of the Lessee's right, title and interest in and to the Lease shall be considered as having assumed and become bound by all of the Lessee's obligations hereunder, and shall take the Lease subject to all prior breaches and shall be liable therefor in the same manner as the Lessee or prior transferee.
8. The Lessee shall, at its own expense, keep and maintain the Leased Premises in a presentable condition consistent with good business practice and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the immediate vicinity. Maintenance responsibilities include, but shall not be limited to, any required paving, repaving, repairs, storm sewer maintenance and repair, snow and ice removal, removal of garbage and debris, and landscape upkeep. No exterior storage of materials or equipment is permitted on the Leased Premises

except the temporary and orderly placement of items in conjunction with construction, maintenance or repair activities.

9. The Lessee shall be responsible for all property taxes, personal property taxes, assessments and special assessments that accrue to the Leased Premises.
10. The Lessee shall be solely responsible for and promptly pay all charges for water, electricity, sewer, storm water, and any other utility used upon or furnished to the Leased Premises. The obligation of the Lessee to pay for such utilities shall commence as of the date on which possession of the Leased Premises is delivered to the Lessee, without regard to the formal Effective Date of the Lease.
11. The City shall have the right to terminate the Lease upon a minimum of one (1) year's written notice in the event the Leased Premises in the sole discretion of the governing body of the City are desired for transportation purposes.
12. Upon ten (10) days written notice by the City, per the terms and conditions of Madison General Ordinance 10.31, the Lessee shall remove all improvements, wholly vacate, and cease all use of the portion of the Leased Premises located within East Main Street right-of-way, as depicted on Exhibit A.
13. The Lessee shall have the right, at its sole option, to terminate the Lease by giving the City a minimum of thirty (30) days written notice of termination.
14. The Lessee shall be liable to and 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 attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, 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, caused by or resulting from the acts or omissions of the Lessee or its officers, officials, members, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of the Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. This paragraph shall survive termination and assignment or transfer of the Lease.
15. The Lessee shall carry commercial general liability insurance covering as insured the Lessee and including the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 minimum per occurrence. This policy shall also include contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of the Lease. As evidence of this coverage, the Lessee shall furnish the City with a certificate of insurance on a form approved by the City. If requested by the City Risk Manager, the Lessee shall provide copies of additional insured endorsements. If the coverage required above expires while the Lease is in effect, the Lessee shall provide a renewal certificate to the City for approval.
16. The Lessee represents and warrants that its use of the Leased Premises will not generate any hazardous substance, and it will not store or dispose on the Leased Premises nor transport to or over the Leased Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Lessee further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release caused by the Lessee, or its officers, officials, members, employees, agents, assigns, guests, invitees, sublessees, or contractors/subcontractors, including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any

federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.

17. The Lessee agrees to waive any loss of access and to hold the City harmless for any damages resulting from loss of access or noncompliance with City zoning regulations or otherwise that may result from the termination of the Lease. By executing the Lease, the Lessee shall acknowledge that a termination of the Lease will have no adverse impact on the viability or use of the Abutting Property.
18. The Lessee shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Leased Premises.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby 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.