



## Legislation Text

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**File #:** 04416, **Version:** 1

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### **Fiscal Note**

Rent for the year 2005 of \$11,476.08 and for the year 2006 of \$11,820.36 will be deposited into the General Fund revenue Account No. GNO1-78220. Rents will increase annually by 3% until the lease expiration in 2015.

### **Title**

Authorizing the Mayor and City Clerk to execute a lease with Group Health Cooperative of South Central Wisconsin for City-owned property held for future transportation purposes.

### **Body**

WHEREAS, the City is the owner of the parcel of land located between West Main Street and West Washington Avenue that was formerly railroad right-of-way and was acquired by the City for transportation purposes (the "City Parcel"); and

WHEREAS, Group Health Cooperative of South Central Wisconsin ("GHC") is the owner of certain property at 675 West Washington Avenue, located adjacent to the City Parcel; and

WHEREAS, the City and GHC were parties to a certain Lease dated January 30, 1996 (the "Prior Lease"), whereby GHC leased from the City all of the City Parcel; and

WHEREAS, due to the City's need to utilize a portion of the City Parcel for the construction and operation of a public pedestrian and bicycle path (the "Path"), the Prior Lease was terminated by the City effective as of July 31, 2005; and

WHEREAS, the City has completed construction of the Path over a portion of the City Parcel; and

WHEREAS, GHC desires to lease that portion of the City Parcel not needed for the operation of the Path; and

WHEREAS, the terms of a lease have been negotiated between GHC and the Real Estate Section.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease ("Lease") with Group Health Cooperative of South Central Wisconsin ("GHC") allowing for the use of a portion of the "City Parcel", which is described on attached Exhibit A, subject to the following terms and conditions:

1. The City shall lease to GHC that portion of the City Parcel identified on Exhibit B (the "Leased Premises"). The Leased Premises are improved with an existing paved parking lot. GHC has inspected and accepts the Leased Premises in an "as-is" condition.
2. The Lease shall be for a term of ten (10) years, subject to early termination pursuant to its terms. The effective date of the Lease shall be September 1, 2005 (the "Effective Date") and the Lease shall expire on August 31, 2015. The Lease will automatically continue for successive terms of one (1) year each, unless terminated in accordance with the terms of the Lease.
3. For the period from the Effective Date through the end of Lease year one (1), GHC shall pay the City an annual rent equal to \$11,476.08. Beginning on the first anniversary of the Effective Date of the Lease and on each anniversary date thereafter, the annual rent shall increase by three percent (3%) per year compounded annually. The rent adjustment shall continue throughout any renewal period(s), if granted, following the initial ten (10) year term of the Lease.
4. GHC shall use the Leased Premises for the maintenance and operation of a parking lot which use shall be ancillary to its business operation at 675 West Washington Avenue (the "Abutting Property"). The Leased Premises shall be used exclusively by GHC and the employees, customers and vendors of GHC's business operations at the Abutting Property. The Leased Premises shall not be used for parking by the general public, with general public

defined as all persons other than GHC and the employees, customers and vendors of GHC's business operation at the Abutting Property.

5. GHC shall supervise, regulate and maintain the Leased Premises to permit parking only in parking stalls which have been approved by the City. GHC shall prohibit and prevent parking by anyone on any unimproved area of the Leased Premises.
6. No buildings or other structures shall be erected upon the Leased Premises.
7. GHC shall in no way encumber, or allow to be encumbered, the City's title to the Leased Premises.
8. Upon the expiration or termination of the Lease, GHC shall, at GHC's cost, remove from the Leased Premises the parking lot improvements. GHC shall also restore the Leased Premises to a condition equivalent to that which existed prior to the date that GHC first occupied the Leased Premises. Removal and restoration shall be accomplished within sixty (60) days of expiration or termination of the Lease, except as may be adjusted by the City to allow for winter conditions. The expiration or termination of the Lease shall not become effective until removal and restoration has been accomplished to the satisfaction of the City, however, during such removal and restoration period GHC's right to use the Leased Premises shall be limited to removal and restoration activities and shall not include parking. In the event GHC fails to accomplish said removal and restoration, the City may cause the removal and restoration to be accomplished at GHC's expense and with no liability or cost to the City. The City may waive or alter this removal requirement if, at its sole discretion, it so chooses.
9. GHC shall at any time, upon notice to the City, be permitted to sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey its interests in the Lease and the 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 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 this leasehold interest shall not be severed from the ownership of the Abutting 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 GHC's right, title and interest in and to the Lease shall be considered as having assumed and become bound by all of GHC's obligations hereunder, and shall take the Lease subject to all prior breaches and shall be liable therefor in the same manner as GHC or prior transferee.
10. GHC shall 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, striping, snow and ice removal, removal of garbage and debris, landscape upkeep and parking enforcement. No exterior storage of materials, equipment or vehicles is permitted on the Leased Premises except the temporary and orderly placement of items in conjunction with maintenance or repair activities.
11. To the extent not otherwise exempt, GHC shall be responsible for all property taxes, personal property taxes, assessments and special assessments that accrue to the Leased Premises.
12. GHC shall be solely responsible for and promptly pay all charges for water, electricity, storm water, and any other utility used upon or furnished to the Leased Premises.
13. GHC 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 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, caused by or resulting from the acts or omissions of GHC and/or its officials, officers, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of the Lease, whether caused by or contributed to by

the negligent acts of the City, its officers, officials, agents, and employees. Additionally, GHC 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 \$1,000,000.00 per occurrence. The policy or policies shall name the City as an additional insured. As evidence of this coverage, GHC shall furnish to the City a certificate of insurance on a form provided by the City.

14. The City shall have the right to terminate the Lease by giving GHC a minimum of one hundred eighty (180) days written notice, in the event the Leased Premises in the sole discretion of the governing body of the City are desired for transportation purposes. Transportation purposes include, without limitation because of enumeration, public alleys, streets, highways, bike paths, sidewalks, and facilities for the development, improvement and use of public mass transportation systems.
15. GHC shall have the right, at its sole option, to terminate the Lease by giving the City a minimum of one hundred eighty (180) days written notice of termination.
16. GHC agrees to hold the City harmless for any loss of parking or for noncompliance with City zoning regulations that may result from the expiration or termination of the Lease.

BE IT 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.