



## Legislation Text

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**File #:** 21013, **Version:** 1

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### **Fiscal Note**

No expenditure required. There will be a very small rent payment from MG&E to the City, likely amounting to less than \$10 per year.

### **Title**

Authorizing the execution of an Agreement for Installation Operation, Maintenance and Repair of Photovoltaic System with Madison Gas and Electric Company for the installation of a demonstration photovoltaic system at Olbrich Botanical Gardens, located at 3330 Atwood Avenue.

### **Body**

WHEREAS, Madison Gas and Electric Company ("MGE") desires to install a photovoltaic system ("PV System") at the Olbrich Botanical Gardens property, located at 3330 Atwood Avenue; and

WHEREAS, City Parks staff is desirous of having a PV System installed at Olbrich Botanical Gardens as it will provide a source of illumination, at no cost to the City; and

WHEREAS, the PV 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 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 system ("PV System") at the Olbrich Botanical Gardens property, located at 3330 Atwood Avenue and depicted on attached Exhibit A (the "Property"), on the following general terms and conditions:

1. The approximate location of the PV System within the Property is depicted on attached Exhibit B.
2. The installation by MGE may include such items as concrete footings, the PV System structure, underground electrical power conduits, ground signs, and similar items. Where existing landscaping, concrete sidewalks, or streets are disturbed due to excavation or trenching, such items shall be repaired or replaced by MGE to comply with City of Madison building standards. Prior to installation, MGE and the City shall mutually agree on the plans and specifications for the PV System.
3. MGE shall be the sole and complete owner of the PV System and all components thereof, including renewable energy credits.
4. 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 System and restore the Property to match the condition at the time of installation; or (c) offer the PV System for sale to the City at its then depreciated value. If the City declines to purchase the PV System, then MGE shall retain the right to exercise either of the remaining options.
5. Throughout the term of the Agreement, MGE shall provide a rent payment of ten percent (10%) of the

PV System's AC electrical output to the City. The rent payments will be measured through a revenue grade utility meter included as part of the PV System and shall be calculated using the MGE retail rate effective at the Property. This output will be reflected in an annual payment to The City's utility account with MGE, which amount shall be paid within forty-five (45) days after each anniversary date of the first day of operation of the PV System.

6. MGE shall have the right to erect and maintain, at its sole cost, an informational display describing the operation of the PV System, which display shall be located immediately adjacent to the PV System. The size, design, location and contents of the display, as well as maintenance standards, shall be subject to the Park Superintendent's prior written approval. Additionally, MGE shall have the right to post signs on or adjacent to the PV System that identify MGE as the owner of the PV System.
7. The City and MGE shall promptly report to each other any problems with the PV 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 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, its employees and invitees to the Property.
8. The City shall not: (a) plant any vegetation whose growth or care will interfere with the operation of the PV System; (b) install or construct any structure that will impair the functioning of the PV System or damage or shorten the useful life of the PV 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 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 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 System.
9. 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 System in accordance with the terms of the Agreement; (c) the purchase of the PV 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.
10. Provided the City does not elect to purchase the PV System, either the City or MGE shall be responsible for the removal of the PV 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 System and restoration of the Property to match its preinstallation condition and shall return the PV System to MGE in a condition that allows for its reuse.
  - b) If the Agreement is terminated at any time due to an event of default by MGE, or if MGE terminates the 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 System and restoration of the Property to match its preinstallation condition.
11. MGE shall pay any tax assessed against the PV System by the State of Wisconsin Department of

Revenue under Chapter 76 of the Wisconsin Statutes.

12. MGE shall be liable to and 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 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. Notwithstanding anything in the Agreement to the contrary, MGE shall not indemnify the City against the City's sole negligence.
13. 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.

Description of the Property:

The following described property, being located in the Northeast 1/4 of Section 8, T7N, R10E, City of Madison, Dane County, Wisconsin:

Commencing at the South corner of Lot 22, Block 34, Fifth Addition to Fair Oaks; thence S60°53'E, 71.71 feet to the point of beginning; thence N35°36'35"E, 153.27 feet to a point of curve; thence along said curve to the left, radius 100 feet, chord bearing N07°23'46"E 94.55 feet; thence N20°49'03"W, 87.41 feet to a point of curve; thence along said curve to the right, radius 40 feet, chord bearing N24°10'51"E, 56.57 feet; thence N69°10'45"E, 178.52 feet to a point of curve; thence along said curve to the left, radius 180 feet, chord bearing N52°23'40"E, 103.96 feet; thence N35°34'35"E, 217.64 feet; thence S59°30'45"E, 690 feet; thence S27°W, 732.93 feet; thence N66°W, 585.25 feet; thence N60°53'W, 225 feet to the point of beginning.

Tax Parcel No.: 251-0710-081-0104-1