



## Legislation Text

File #: 22239, Version: 1

### Fiscal Note

There will be a small decrease in General Fund revenues as the annual lease rent expense will decrease from \$4,338 to \$2,960, or a reduction of \$1,378 annually.

### Title

Authorizing a first amendment to the lease between the City of Madison and Madison Gas and Electric Company for part of Railroad Street Right of Way.

### Body

On October 16, 1995 the Common Council adopted a resolution (Resolution No. 52,443 ID No. 17,839) authorizing the execution of a lease (the "Lease") between the City of Madison and Madison Gas and Electric Company (the "Lessee") for the construction, maintenance and operation of driveway access within the Railroad Street right-of-way (shown on the attached exhibit as "Leased Premises"), which use was ancillary to the Lessee's property located at 120 South Baldwin Street (the "Lessee's Property"). The Lessee is concerned that under the current terms of the Lease it may lose access to the Lessee's Property without alternate access being provided which would greatly reduce the viability of its operations at this location. In addition the Lessee is currently using a portion of the Railroad Street right-of-way outside of the Leased Premises for parking and exterior storage. The City and the Lessee have negotiated terms for an amendment to the Lease that will: (1) increase the area of the Leased Premises; (2) reset the current thirty (30) year Lease term, which is currently due to expire on March 31, 2024; (3) change the current one (1) year automatic renewal terms to three (3) automatic ten (10) year renewal terms; (4) remove a portion of the Leased Premises from the rent calculation; (5) allow parking and exterior storage on a portion of the Leased Premises; (6) increase the minimum written notice of Lease termination from the City from one hundred eighty (180) days to one (1) year; and (7) limit the discretion of the City to terminate the Lease for any transportation purposes to such time that the City improves the Leased Premises (Railroad Street right-of-way) to provide public street access to the Lessee's Property. The Lease will also be amended to delete several clauses and replace with current City Indemnification and Insurance and Lessee Waivers and Accessibility language. All other terms and conditions of the Lease will remain in full force and effect. The City Engineer has reviewed and approved the proposed amendments.

NOW, THEREFORE, BE IT RESOLVED that the Common Council authorizes the execution of a first amendment to the lease (the "Lease") between the City of Madison and Madison Gas and Electric Company, dated October 16, 1995, to provide driveway access to MG&E's property located at 120 South Baldwin Street, amending the Lease as follows:

- 1.) Paragraph 1. Leased Premises. Amend Leased Premises to include; (i) current Leased Premises plus balance of Railroad Street right-of-way north of Leased Premises ("Parcel A," consisting of 12,864 square feet) for exclusive driveway access to the Lessee's building located at 120 South Baldwin Street (the "Lessee's Property"); and (ii) area within Railroad Street right-of-way currently being used by the Lessee for access and exterior storage ("Parcel B," consisting of 11,840 square feet). (See attached exhibit).
- 2.) Paragraph 2. Term. Reset term of Lease to commence June 1, 2011 and be for thirty (30) years, subject to rights of renewal and early termination contained in Lease. Initial term will expire on May 31, 2041.
- 3.) Paragraph 3. Renewal. Amend Renewal provision so that Lease automatically renews for three (3)

subsequent ten (10) year terms unless terminated earlier pursuant to Paragraph 14 of the Lease.

- 4.) Paragraph 4. Rent. Remove Parcel A of Leased Premises from rent calculation, and calculate rent on Parcel B only. Annual rent will decrease from \$4,337.62 to \$2,960.
- 5.) Paragraph 6. Use and Restrictions of Use of Leased Premises. Amend language to allow vehicular access, parking and exterior storage on Parcel B of the Leased Premises. Parking and exterior storage will continue to be prohibited on Parcel A of the Leased Premises.
- 6.) Paragraph 8. Maintenance. Delete last sentence (prohibition on exterior storage).
- 7.) Paragraph 11. Indemnification and Insurance. Delete in its entirety and replace with following language:

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, officers, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. Additionally, the Lessee 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. As evidence of this coverage, the Lessee shall furnish to the City a certificate of insurance on a form provided by the City.

- 8.) Paragraph 12. Lease Waivers. Delete in entirety and replace with following language:

In the event of the Lessee's vacation of the Leased Premises or if the City terminates this Lease pursuant to the provisions of this Lease, the Lessee hereby waives any rights against the City that may be construed to accrue to the Lessee, its successors and assigns, by provisions of Section 32.19 of the Wisconsin Statutes, as amended.

- 9.) Paragraph 13. Assignment and Subletting. Delete in entirety (prohibition on assignment and subletting).
- 10.) Paragraph 14. Termination. Amend as follows:

- Delete 14.a.(2) in its entirety (written notice prior to expiration of initial and any renewal terms).
- Delete 14.a.(3) in its entirety and replace with following language:

In the event and at such time as the City improves the Leased Premises (Railroad Street ROW) as a public street such that vehicular access to the Lessee's Property as otherwise provided under this Lease is replaced by public street access. In addition to providing public street access, the City, may in its discretion, also include sidewalks, bike paths and other public transit facilities in the Railroad Street ROW so long as these improvements do not unreasonably interfere with or restrict vehicular access to the Lessee's Property. If the City improves only a portion of the Leased Premises as a public street, the Lease shall remain in full force and effect

for the remainder of the Leased Premises at the sole discretion of the Lessee. In such event, rent payments shall be adjusted to reflect the reduced area of the Leased Premises. The City shall provide Lessee with written notice of its intent to convert the Railroad Street ROW (or any part thereof within the Leased Premises) to an improved public street at least one (1) year in advance of construction.

- Delete 14.c. in its entirety and replace with following language:

Upon the sale of the Lessee's Property, the City shall have the right to terminate the Lease for Parcel B of the Leased Premises by giving the Lessee one (1) year written notice in the event that Parcel B, in the sole discretion of the City is 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.

11.) Paragraph 17. Loss of Access. Amend to add "... provided such termination is in accordance with the terms of this Lease".

12.) Paragraph 19.b. Delete last sentence (hold harmless for any loss of access).

13.) Paragraph 25. Non-Discrimination in Employment. Delete in its entirety and replace with following language:

In the performance of the services under this Lease, the Lessee agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. The Lessee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Lease because of race, religion, color, age, disability, sex or national origin.

14.) Paragraph 26. Accessibility. Delete in its entirety and replace with following language:

The Leased Premises shall conform where applicable to COMM 61.05 of the Wisconsin Administrative Code, Madison General Ordinance 39.05, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by the Lessee.

BE IT FURTHER RESOLVED that all other terms and conditions of the Lease shall remain unchanged and in full force and effect.

BE IT STILL FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute any and all documents to accomplish the transaction contemplated in this resolution.