



Legislation Text

File #: 56217, Version: 1

Fiscal Note

The proposed resolution authorizes the execution of a lease with Madison Area Technical College District to allow the District to place a sign on Fire Station #6 property. The initial term of the lease is July 2, 2019 through December 31, 2021. There are no annual rent payments due during the lease period, however, a \$500 administrative fee will be paid to the City. The lease may be renewed for four (4) subsequent five (5) year terms, upon written agreement of the City and the District. A \$250 administrative fee will be due with each approved renewal. No appropriation is required.

Title

Authorizing the execution of a Lease with Madison Area Technical College District for the use of City-owned property located at 825 W. Badger Road for the placement of an off-premise directional sign on property commonly known as Fire Station #6. (14th AD)

Body

WHEREAS, the City of Madison ("City") owns and operates Fire Station No. 6 located at 825 W. Badger Road, City of Madison, Dane County, Wisconsin ("City's Property"), legally described on attached Exhibit A; and

WHEREAS, Madison Area Technical College District ("Lessee") desires to install an off-premise directional sign structure ("Sign") on the City's Property for the benefit of the Lessee's property located at 2429 Perry Street, Madison, Wisconsin ("Benefitting Property"), also legally described on attached Exhibit A; and

WHEREAS, the City's Property is zoned CC - Commercial Center, which permits off-premise directional signs, provided the Sign comply with conditions set forth in Madison General Ordinance 31.115; and

WHEREAS, City staff assisted the Lessee with the exact placement and dimensions of the Sign on the City's Property, to ensure compliance with all applicable Madison General Ordinances; and

WHEREAS, the City and the Lessee have agreed, among other things, to enter into a lease for the Sign.

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

1. Leased Premises. The City hereby leases to the Lessee that portion of the City's Property depicted on attached Exhibit B ("Leased Premises").
2. Term. This Lease shall be for an initial term of 30 months, subject to early termination pursuant to the terms of this Lease. This Lease shall commence on **July 2, 2019** (the "Effective Date") and expire on **December 31, 2021**.
3. Rent. There shall be no annual rent payments due during the period of this Lease. However, a \$500 administrative fee shall be paid upon the Lessee's execution of this Lease, with a \$250 administrative fee due at the time of each approved renewal.
4. Renewal. This Lease may be renewed for four (4) subsequent five (5) year terms, upon written agreement of the Parties as to the terms of the renewal. If the Lessee desires to renew this Lease, the Lessee must give notice in writing to the City a minimum of one hundred eighty (180) days prior to the

expiration of the initial term or any renewal term, by the mailing of a notice by certified mail, return receipt requested, or by personal delivery to the City at the address specified in Paragraph 22. Following receipt of such notice, the City shall indicate by written notice to the Lessee, given within sixty (60) days after receipt of the Lessee's notice, of its approval or denial of the Lessee's request for renewal. Non-response by the City shall be deemed to be denial of the Lessee's request.

5. Use of Leased Premises.

- a. The Lessee shall use the Leased Premises for the siting of the Sign and for the maintenance and repair of the Sign by the Lessee, its employees, contractors, and agents. A preliminary image of the Sign is shown on attached Exhibit C.
- b. The Sign, or any signs on the Leased Premises, shall be in conformity with the provisions of Chapter 31, Sign Control Ordinance, Madison General Ordinances.
- c. The Lessee shall adhere to the Vision Clearance Triangle guidelines set forth by Madison General Ordinance 27.05(2) when installing the Sign.

6. Special Conditions.

- a. In addition to the Vision Clearance Triangle guidelines, the City requires that the Sign be placed at least 11 feet from the Badger Road right-of-way and set back no more than 14 feet from the Perry Street right-of-way, to allow fire department vehicles adequate site lines for oncoming traffic.
- b. Plans and specifications for landscaping or hardscaping around the Sign shall be subject to review by the current Assistant Chief, Support Services, of the City of Madison Fire Department (currently Michael D. Popovich at 608-266-5946) prior to installation.
- c. No buildings or other structures shall be erected upon the Leased Premises.
- d. The Lessee shall in no way encumber, or allow to be encumbered, the City's title to the Leased Premises or the City's Property.
- e. Except in the case of an emergency, the Lessee shall notify the City a minimum of one (1) business day in advance of any instance of the Lessee or its employees or agents accessing the Leased Premises. Notice shall be given by calling the current Assistant Chief, Support Services, of the City of Madison Fire Department (currently Michael D. Popovich at 608-266-5946). When advance notice is not possible, notice shall be given no later than one (1) business day following the date of access.
- f. The Lessee shall repair any damage to Leased Premises caused by the Lessee or its employees or agents when accessing the Leased Premises. The Lessee shall promptly restore the area damaged by the access or work to the original grade and vegetation.
- g. The Lessee agrees that the City shall not be held responsible for any damage or loss to the Sign, landscaping or hardscaping, whether the damage is caused by the City, its employees, contractors or others, unless caused by the sole negligence of the City, its employees or contractors.
- h. Upon the expiration or termination of this Lease, pursuant to Paragraph 17, the Lessee, at the Lessee's cost, shall remove from the Leased Premises the Sign and any structures, equipment and materials placed upon the Leased Premises by the Lessee. All such items shall remain the property of the Lessee. The Lessee shall also restore the surface of the Leased Premises to a

condition equivalent to that which existed prior to the date that the Lessee first occupied the Leased Premises. The Parties acknowledge that the Lessee shall not be required to remove the footings for the Sign posts provided said footings have sufficient soil coverage and even surface area. Removal and restoration shall be accomplished within ten (10) days of expiration or termination of this Lease, except as may be adjusted by the City to allow for winter conditions. The expiration or termination of this 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 the Lessee's right to use the Leased Premises shall be limited to removal and restoration activities. In the event the Lessee fails to accomplish said removal and restoration, the City may cause the removal and restoration to be accomplished at the Lessee'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.

7. Assignment. It is understood that the Lessee is the owner of the Benefitting Property, and that the Lessee's interest in this Lease is appurtenant to the Lessee's ownership of the Benefitting Property. It is further understood that this leasehold interest shall not be severed from the ownership of Benefitting Property. Accordingly, the Lessee shall at any time, upon notice to the City, be permitted to sell, assign, transfer, mortgage, pledge, encumber, grant and convey its interests in this 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 Benefitting Property to the same purchaser or transferee of this 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 Benefitting Property. All such Transfers shall be subject to all of the terms of this 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 this 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. Subletting. The Lessee shall not be permitted to sublease the Leased Premises.
9. Maintenance. The Lessee shall, at its own expense, keep and maintain the Sign, including any approved landscaping/hardscaping, 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, general repairs, staining and painting. No exterior storage of materials, equipment or vehicles is permitted on the Leased Premises or the City's Property, except the temporary and orderly placement of items in conjunction with maintenance, repair or construction activities.
10. Taxes
 - a. City's Taxes. The City is a tax exempt entity. Should any City Ordinance or State of Wisconsin Statute after the Effective Date require that the City's Property, excluding the Sign, be subject to real estate taxes or assessments, the City shall be responsible for all such charges.
 - b. Lessee's Taxes. The Lessee shall pay, before delinquency, any municipal, county and state or federal taxes assessed against the Sign itself, as personal property, as well as any tax assessed against the value of the permit issued by the City for the Sign.
11. Indemnification. Each party shall be responsible its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or

omissions including providing its own defense, arising out of this Lease. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law.. This paragraph shall survive termination and assignment or transfer of this Lease.

12. Insurance. The Lessee shall carry commercial general liability insurance covering as insured the Lessee and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 minimum per occurrence as may be adjusted, from time to time, by the City of Madison's Risk Manager. This policy shall 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 this Lease. As evidence of this coverage, the Lessee shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, the Lessee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while this Lease is in effect, the Lessee shall provide a renewal certificate to the City for approval.
13. Hazardous Substances; Indemnification. 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 including all attorneys' fees, costs and penalties incurred as a result thereof. "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. This paragraph shall survive termination and assignment or transfer of this Lease.
14. Compliance. 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. The Lessee may, if in good faith and on reasonable grounds, dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Lessee agrees that any such contest shall be prosecuted to a final conclusion as soon as possible and that it will hold the City harmless with respect to any actions taken by any lawful governmental authority with respect thereto.
15. Subordination.
 - a. This Lease is subordinate to rights and privileges granted by the City to public and private utilities across, over or under the Leased Premises.
 - b. The Lessee shall subordinate its rights in this Lease, without compensation, at the request of the City to provide rights, privileges, easements and rights-of-way for all current or future public and private utilities across or along the Leased Premises, provided that neither such subordination nor

such easements shall interfere, except temporarily during construction or temporarily pursuant to rights which accrue to such easements or rights-of-way, with the use of the Leased Premises under the terms of this Lease.

16. Right of Entry. The City or its representatives shall have the right to enter upon the Leased Premises at any reasonable time for the following purposes:

- a. To make any inspection it may deem expedient to the proper enforcement of any term or condition of this Lease or in the exercise of its municipal powers.
- b. For the purpose of performing general maintenance, including but not limited to mowing.
- c. For the purpose of performing work related to any public improvement, provided that the City or its representatives restore the Leased Premises to a condition equivalent to that which existed on the date the City initiated the installation of the public improvement.

17. Termination.

a. The City shall have the right, at its sole option, to declare this Lease void, terminate the same, reenter and take possession of the Leased Premises under the following conditions:

(1) By giving the Lessee a minimum of thirty (30) days written notice of termination, upon or after any one of the following events:

- i. The filing by the Lessee of a voluntary petition in bankruptcy.
- ii. The institution of proceedings in bankruptcy against the Lessee and the adjudication of the Lessee as bankrupt pursuant to such proceedings.
- iii. The taking by a court of competent jurisdiction of the Lessee's assets pursuant to proceedings brought under the provisions of any federal or state reorganization act.
- iv. The appointment of a receiver of the Lessee's assets.
- v. The divestiture of the Lessee's estate herein by other operation of law.
- vi. The abandonment by the Lessee of the Leased Premises. Abandonment shall not be deemed to occur while rental payments are current.
- vii. The use of the Leased Premises for an illegal purpose.
- viii. The failure of the Lessee to pay when due any rent or any other monetary sums due pursuant to the terms of this Lease.
- ix. In the event the Lessee defaults in the performance of any other term or condition of this Lease.

The termination shall not be effective, if within such thirty (30) day period, the event giving rise to the City's right to terminate ceases to exist. In the event of a breach of a term, covenant or condition of this Lease which requires more than the payment of money to cure and which cannot, because of the nature of such default, be cured within said thirty (30) days, then the Lessee shall be deemed to be complying with such notice if, promptly upon

receipt of such notice, the Lessee immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable. In the event of termination under this Subparagraph, any prepaid rent shall be retained by the City.

- (2) In the event that the Lessee fails to maintain insurance as required by this Lease, the City may elect to: (a) immediately terminate this Lease and cause the removal of all personal property installed upon the Leased Premises at the sole expense of the Lessee; or (b) purchase or pay for any insurance coverage required by this Lease and charge the Lessee the cost of same as additional rent. Any amount paid by the City hereunder shall be repaid by the Lessee to the City upon demand, together with interest thereon at the rate of twelve percent (12%) per annum. In the event of termination under this Subparagraph, any prepaid rent shall be retained by the City.

- (3) By giving the Lessee a minimum of thirty (30) days written notice of termination in the event the Lessee defaults in the performance of any term or condition of this Lease other than those as set forth in Subparagraphs 16.a.(1) and 16.a.(2). Notwithstanding the foregoing, if such default is not a health or safety violation and cannot, because of the nature of the default, be cured within said thirty (30) days, then the Lessee shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the Lessee immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable. In the event of termination under this Subparagraph, any prepaid rent shall be retained by the City.

- (4) Effective at any time by giving the Lessee a minimum of one hundred eighty (180) days written notice of termination in the event the Leased Premises, at the sole discretion of the City, are desired for any public use or purpose. In the event of termination under this Subparagraph, any rent that has been prepaid for the period following the date of the Lessee's vacation of the Leased Premises shall be prorated on a per diem basis and refunded to the Lessee.

- (5) By giving the Lessee a minimum of ninety (90) days written notice of termination in the event of the sale of the City's Property, unless the purchaser agrees to allow the Sign to remain on the City's Property. In the event of termination under this Subparagraph, any rent that has been prepaid for the period following the date of the Lessee's vacation of the Leased Premises shall be prorated on a per diem basis and refunded to the Lessee. The City shall not prohibit or discourage the purchaser from allowing the Sign.

- (6) If the whole or any part of the Leased Premises shall be taken by Federal, State, county, or other authority for public use, or under any statute, or by right of eminent domain, then when possession shall be taken thereunder of the Leased Premises, or any part thereof, the term hereby granted and all rights of the Lessee hereunder shall immediately cease and terminate, and the Lessee shall not be entitled to any part of any award that may be made for such taking, nor to any damages therefor except that the rent shall be adjusted as of the

date of such termination of this Lease.

Failure of the City to declare this Lease terminated upon the breach or default of the Lessee for any reason set forth in this Subparagraph 17.a. shall not operate to bar or destroy any right of the City to terminate this Lease for any subsequent breach or default of any term or condition of this Lease.

- b. The Lessee shall have the right, at its sole option, to terminate this Lease by giving the City a minimum of thirty (30) days written notice of termination and by complying with Paragraphs 6.f. and 19. In the event of termination under this Subparagraph, any rent that has been prepaid for the period following the date of termination shall be prorated on a per diem basis and refunded to the Lessee.
- 18. No Waiver. Failure or delay on the part of either party to enforce any of the terms, covenants, conditions or agreements hereof shall not operate as a waiver thereof nor void or affect the right of the party to enforce the same upon any subsequent default or breach. Except as otherwise provided in this Lease, the rights and remedies herein granted are cumulative and are in addition to any given by statutes, rules of law or otherwise and the use of one remedy shall not be taken to exclude or waive the right to the use of another.
- 19. Rights Upon Expiration or Termination. Upon the expiration or termination of this Lease for any cause, the Lessee's rights in the Leased Premises shall cease, and the Lessee shall immediately surrender the Leased Premises, subject to the provisions of Paragraph 6.f.
- 20. Hold Over. In the event the Lessee shall continue to occupy or use the Leased Premises after the expiration of this Lease or any extension thereof, such holding over shall be deemed to constitute a tenancy from month to month, upon the same terms and conditions as herein provided except that rent equal to one-twelfth (1/12) of the annual rent shall be paid monthly in advance, and in no event shall the tenancy be deemed to be year to year.
- 21. Definition of City and Lessee. The terms "City" and "Lessee" when used herein shall mean either singular or plural, as the case may be, and the provisions of this Lease shall bind the parties mutually, their heirs, personal representatives, successors and assigns.
- 22. Notices. All notices to be given under the terms of this Lease shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:

For the City: City of Madison
 Economic Development Division
 Office of Real Estate Services
 Attn: Manager
 215 Martin Luther King, Jr. Blvd., 3rd Floor
 P. O. Box 2983
 Madison, WI 53701-2983

With copy to: City of Madison Fire Department
 Attn: Michael D. Popovich
 314 W. Dayton Street
 Madison, WI 53703-2506

For the Lessee: Madison Area Technical College District

Attn: Mike Stark
1701 Wright Street
Madison, WI 53704

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

23. Non-Discrimination in Employment. 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, gender identity, 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, gender identity or national origin.
24. Severability. If any term or provision of this Lease or the application thereof to the City or the Lessee or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such terms or provisions to the City or the Lessee or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Lease shall be valid and be enforceable to the fullest extent permitted by law.
25. Entire Agreement. All terms and conditions and all negotiations, representations and promises with respect to this Lease are merged into this Lease. No alteration, amendment, change, or addition to this Lease shall be binding upon the Parties unless in writing and signed by them.
26. Lessee Waivers of Eminent Domain Benefits and Award.
- a. 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.
 - b. In the event the City condemns the Lessee's interest in the Leased Premises, the Lessee agrees that the award, including damages, for all of its interests shall be Zero Dollars (\$0), and further waives all relocation benefits of every kind and nature.
 - c. In the event the Leased Premises or any part thereof shall be needed either permanently or temporarily for any public or quasi-public use or purposes by any authority in condemnation proceedings or by any right of eminent domain, the entire compensation award therefor, including, but not limited to, all damages and compensation for diminution of value of the leasehold, reversion and fee, shall belong to the City without any deduction therefrom for any present or future estate of the Lessee, and the Lessee hereby assigns to the City all of its right, title and interest to any such award. However, the Lessee shall have the right to recover from any condemning authority, other than the City, such compensation as may be separately awarded to the Lessee for moving and relocation expenses.
27. Public Record. This Lease will be recorded in the Office of the Dane County Register of Deeds after it is executed by the Parties.

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.