# Legislation Text

**File #:** 57356, **Version:** 2

## Fiscal Note

The proposed resolution authorizes a $500,000 grant to Art + Literature Laboratory (ALL) to assist with building tenant improvements in the South Livingston Street Garage, currently operated by the City's Parking Utility. The commercial space will be leased by ALL for the operation of a non-profit arts center. The initial term of the lease will be for 20 years with monthly rent payable to the Capital Revolving Loan Fund. The $500,000 grant will be paid back in full according to the rental schedule agreed upon in the Letter of Intent included in the lease. The $500,000 grant is funded by the Economic Development Division's Capital Revolving Fund Loans capital program, which includes $650,000 of budget authority in the 2019 Adopted Capital Budget. No additional City appropriation is required.

## Title

Authorizing the Mayor and City Clerk to execute a lease with Art + Literature Laboratory (ALL) for the use of commercial space in the South Livingston Street Garage, located at 111 South Livingston Street, for the operation of a non-profit arts center, together with the approval of a grant to ALL in the amount of $500,000 from the Madison Capital Revolving Fund.

## Body

WHEREAS, the City of Madison ("City") is the owner of the South Livingston Street Garage located at 111 South Livingston Street ("Property"), operated by the City's Parking Utility, which contains 9,910 square feet of vacant commercial space in grey box condition, fronting the 800 block of E. Main Street ("Leased Premises"); and

WHEREAS, in 2017, the City conducted a Request for Information and selected the Art + Literature Laboratory ("ALL") to be the occupant of the Leased Premises; and

WHEREAS, ALL signed a Letter of Intent ("LOI") detailing the lease terms, and desires to enter into a lease with the City to use Leased Premises for the operation of a non-profit arts center, which is attached hereto; and

WHEREAS, the City agrees to provide a grant to ALL in the amount of $500,000 from the Madison Capital Revolving Fund to assist with building tenant improvements in the Leased Premises, to be paid back in full by the rent schedule contained in the LOI, as evidenced by a Memorandum of Financial Assistance Term Sheet, signed by ALL, which is also attached; and

WHEREAS, the City Attorney's Office has reviewed the LOI and associated documents, and approves of the terms.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease with ALL, for the use of commercial space in the South Livingston Street Garage, located at 111 South Livingston Street, subject to the following terms and conditions:

1. Property. The Tenant will lease a 2-story commercial space situated within a portion of the South Livingston Street Garage located at 111 S. Livingston Street, Madison, Wisconsin ("Property").

2. Leased Premises. The City hereby leases to the Tenant that certain space consisting of 9,910 gross leasable square feet (4,377 square feet on level 1 and 5,533 square feet on level 2) of the Property, as depicted in attached Exhibit A ("Leased Premises"). The City shall deliver the Leased Premises to

Tenant in an as-is condition, with an address to be assigned by the City prior to occupancy.

3. Use. The Tenant shall operate a non-profit arts center in the Leased Premises including, but not limited to, activities such as the following: gallery and exhibition space, performance space, literary arts space, youth and adult education programs, and shared and/or private artist studio space. All uses must comply with City's zoning code and the Leased Premises shall not be used for any illegal purpose. Dwelling units are not permitted in the Leased Premises.

4. Tenant Improvements. Tenant will pay for the build-out of the Leased Premises ("Tenant Improvements") and present its plans to the City for its written approval before any construction work can commence.

   a. Tenant shall guarantee that the first phase of Tenant Improvement construction shall be completed six (6) months from the execution of the Lease. The "first phase" is defined as the receipt of a certificate of occupancy, whether partial or final, for the Leased Premises, and occupancy by the Tenant.

5. Base Lease Term. The initial term of the Lease shall be for twenty (20) years (the "Base Lease Term") commencing upon issuance of the certificate of occupancy from the City for the Leased Premises ("Commencement Date"), and ending twenty years thereafter on the anniversary of the Commencement Date, unless extended by City as hereinafter provided. The Tenant shall open the arts center no later than thirty (30) days from the Commencement Date.

| **Month** | **Base Rent -Annual** | **Base Rent - Monthly** |
|---|---|---|
| Month 0-6 | $ - | $ - |
| Month 7-12 | $ 29,400.00 | $ 4,900.00 |
| Month 13-24 | $ 58,800.00 | $ 4,900.00 |
| Month 25-36 | $ 67,200.00 | $ 5,600.00 |
| Month 37-48 | $ 75,600.00 | $ 6,300.00 |
| Month 49-60 | $ 77,868.00 | $ 6,489.00 |
| Month 61-72 | $ 80,208.00 | $ 6,684.00 |
| Month 73-84 | $ 82,620.00 | $ 6,885.00 |
| Month 85-96 | $ 85,104.00 | $ 7,092.00 |
| Month 97-108 | $ 87,660.00 | $ 7,305.00 |
| Month 109-120 | $ 90,288.00 | $ 7,524.00 |
| Month 121-132 | $ 93,000.00 | $ 7,750.00 |
| Month 133-144 | $ 95,796.00 | $ 7,983.00 |
| Month 145-156 | $ 98,664.00 | $ 8,222.00 |
| Month 157-168 | $ 101,628.00 | $ 8,469.00 |
| Month 169-180 | $ 104,676.00 | $ 8,723.00 |
| Month 181-192 | $ 107,820.00 | $ 8,985.00 |
| Month 193-204 | $ 111,060.00 | $ 9,255.00 |
| Month 205-216 | $ 114,396.00 | $ 9,533.00 |
| Month 217-228 | $ 117,828.00 | $ 9,819.00 |
| Month 229-240 | $ 121,368.00 | $ 10,114.00 |



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6. Option to Renew. If, at the end of the Base Lease Term of this Lease, the Tenant is not in default under the terms and conditions of the Lease, then the Tenant shall have the right to extend the Base Lease Term for four (4) consecutive five (5) year terms (together the "Option Periods"), upon agreement of the parties as to the terms of the renewal. Together, the Base Lease Term, and, if exercised, the Option Periods will be defined as the "Lease Term".

   The rental rates for the Option Periods, if exercised by Tenant and approved by the City, will be determined after the City's review of the Tenant's audited financial statements and tax statements ("Tenant's Financial Statements") for each year of the Base Lease Term or Option Periods. City will deliver a written rental rate proposal or denial to Tenant after reviewing the Tenant's Financial Statements, within 30 days after receipt of the Tenant's Financial Statements.

   The Tenant's Financial Statements need to be provided to the City prior to executing the Lease renewal, at the time the Tenant provides written notice ("Notice") of its desire to extend the Lease. Notice to the City must be in writing two hundred seventy (270) days in advance of the expiration of the Base Lease Term or Option Periods. All Notices under this paragraph shall be given as specified in the Lease.

   In the event Tenant's performance under this Lease or as operator of ALL is unsatisfactory, as determined in the City's sole discretion, then the City will provide written notice to Tenant denying any option(s) to renew the Lease.

7. Tenant's Responsibilities. The Tenant 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. Other responsibilities are detailed as:

   a. The Tenant is responsible at its cost for the repair and replacement of its Tenant Improvements, and the following items in the Leased Premises: lost keys, exterior and interior signs; light fixtures-replacement of light bulbs and ballasts; all plumbing fixtures and accessories; unclogging toilets, sinks, sanitary sewer lateral and drains; running toilets; sprinkler system; damage to interior walls; all necessary related work as a result of damage to exterior walls caused by Tenant; floors stains caused by Tenant; cracks in floor beyond typical settling or wear and tear; personal property taxes; interior and exterior window washing/cleaning; and HVAC units serving the Leased Premises.

   b. The Tenant shall (i) maintain, repair and replace when necessary all HVAC equipment which services only the Leased Premises, and shall keep the same in good condition through regular inspection and servicing, and (ii) maintain continuously throughout the Base Lease Term and any exercised Option Periods a service contract for the maintenance of all such HVAC equipment with a licensed HVAC repair and maintenance contractor approved by the City, which contract provides for the periodic inspection and servicing of the HVAC equipment biannually. Notwithstanding the foregoing, the City may elect at any time to assume responsibility for the maintenance, repair and replacement of such HVAC equipment which serves only the Leased Premises. Tenant shall furnish City with copies of all such service contracts, which shall provide that they may not be canceled or changed without at least 30 days' prior written notice to the City.

   c. In the event Tenant or any of its customers/members, employees, agents, invitees, contractors or licensees, damage the Leased Premises or the Property, then Tenant shall be responsible for the repair or replacement of the damaged items/improvements.

   d. The Tenant is responsible for the removal of residual snow and ice buildup in front of the Leased Premises doors that the City's maintenance equipment could not remove. Tenant is also



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responsible for keeping entrances to the Leased Premises clear of snow. The application of salts or de-icing chemicals is strictly prohibited.

e. The Tenant is responsible for interior maintenance of the designated trash room space provided in the Common Areas, as depicted in attached Exhibit B, as well as the area immediately outside said space. This includes removal and cleaning of any residual trash or liquids left on the ground after trash removal. Maintenance responsibilities of the trash room space also include repair of any damage to the doors, frames, walls and fixtures.

f. All cleaning chemicals used in the trash room space must meet ParkSmart certification standards for green products. The City shall provide Tenant with a list of approved products.

g. The Tenant is responsible for waste and recycling removal on a daily basis or more frequently as needed, at its cost. Tenant shall either: (i) haul the trash off site at its cost. (ii) contract with a third party waste disposal company at its cost to have trash and recycling bins placed in the Common Areas. Dumpsters must be less than 1.5 cubic yards in size and 100% noncombustible, per City fire code requirements.

h. No storage of materials and/or equipment is permitted outside the Leased Premises, except the temporary and orderly placement of items in conjunction with maintenance, repair or construction activities.

8. Operating Expenses. As of the Commencement Date, the Tenant will be responsible for these operating costs related to the Leased Premises: electricity; HVAC; water; landfill; trash collection service; sewer; storm water and urban forestry service; telephone lines*; sprinkler system (with proof of regular maintenance) internet and data charges; routine special assessments levied by the City or others; licenses; commercial liability; worker's compensation; employer's liability, umbrella and property insurance premiums, in accordance with paragraph 30 and 31 herein; interior and exterior window washing/cleaning; and exterior signs.

* The City will pay the operating cost of the phone line required for the fire alarm system only.

In the event the Tenant hires a third party contractor to perform work in, on or adjacent to the Leased Premises, the City needs to review a copy of the contract(s) and approve the scope of work in writing before the Tenant executes the contract(s). The Tenant shall obtain a certificate of insurance from the operators naming the City as additional insured, before executing any contracts. The certificate of insurance forms shall be provided to the City, and kept active during the term of the operating contracts.

9. City's Responsibilities. Except as described above in the above paragraphs 10 and 11, the City will maintain at its cost the following relating to the Leased Premises:

a. foundation; ceiling; sub-flooring (except for any stains or cracks caused by Tenant beyond typical settling, and wear and tear); exterior doors; fire alarm system; electrical system; plumbing system; windows and structural portions of the Leased Premises (except interior walls); except for repairs required thereto by reason of the acts or omission of Tenant, Tenant's employees, agents, invitees, licensees or contractors.

b. The City shall be responsible for major one-time special assessments levied by the City.

c. The City agrees to mow the terrace and remove snow and ice from the public sidewalk in between E. Main Street and the Leased Premises.



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d. The Tenant shall give the City written notice of the necessity for repairs/replacements to the Leased Premises coming to the attention of Tenant, following which the City shall have a reasonable time to undertake and complete such repairs.

e. The City shall not be liable for any damage done or occasioned by or from plumbing, gas, water, seam or other pipes, or sewage or the bursting, leaking or running of any tank, water closet or waste pipe, in, above, upon or about the Leased Premises nor for damage occasioned by water, snow or ice being upon or coming through the roof, skylight, trap door or otherwise.

10. Property Rules and Regulations. Tenant, its vendors and contractors are to abide by all Property rules & regulations listed below (collectively, the "Rules and Regulations"):

a. Tenant shall not obstruct any sidewalks, halls, passages, exits entrances, elevators, or stairways of the Property. The City shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of City would be prejudicial to the safety, character, reputation and interests of the Property and its tenants; provided that nothing herein contained shall be construed to prevent such access to persons with whom any Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities.

b. Loading from the Property through the doors to the Leased Premises requires advance approval to ensure weight of vehicle and loads are acceptable, and that loading activities will not interfere with Property operations.

c. All cleaning chemicals used in the Leased Premises must meet ParkSmart certification standards for green products. The City shall provide Tenant with a list of approved products.

d. Tenant shall not use or keep in the Leased Premises any kerosene, gasoline, or inflammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of office or retail equipment, or as art supplies/materials.

e. Tenant shall not use or permit to be used in the Leased Premises any foul or noxious gas or substance, do or permit anything to be done in the Leased Premises which materially obstructs, materially interferes, or materially injures City or other tenants, nor shall Tenant bring into or keep in or about the Leased Premises any birds or animals, except seeing eye dogs or certified service animals when accompanied by their masters.

f. Tenant shall not use any method of heating or air conditioning other than that supplied or approved by the City.

g. City reserves the right to prevent access to the Leased Premises in case of invasion, riot, earthquake or other emergency by closing the doors or by other appropriate action.

h. The toilet rooms, toilets, urinals, washbowls and other plumbing apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind shall be thrown therein.

i. City reserves the right to exclude or expel from the Leased Premises any person who, in City's judgment is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations.

j. Tenant shall not place in any City trash receptacle any trash originating from the Leased Premises.



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k. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations reasonably established by City and that are consistent with the Lease or any governmental agency.

l. City shall enforce the Rules and Regulations in a non-discriminatory manner. If City agrees to less burdensome or more favorable rules and regulations for the benefit of any other tenant, these Rules and Regulations shall be automatically amended to include any such less burdensome or more favorable Rules and Regulations.

m. These Rules and Regulations are in addition to the terms, covenants and conditions of the Lease for use of Leased Premises in the Property. In the event these Rules and Regulations conflict with any provision of the Lease, the Lease shall control.

n. Smoking, including the use of e-cigarettes, is prohibited throughout the interior and exterior of the Property. Violators will be ticketed and/or removed from the Property.

o. Alcoholic Beverages. The Tenant shall not sell or keep on the Leased Premises alcoholic beverages of any kind whatsoever, in accordance with MGO. An exception may be made for using and serving alcohol during special events held in the Leased Premises. Said exception shall require the express consent and approval of City staff, together with a potential for a liquor license application to be able to serve beer and wine on a limited basis for special events.

p. Sidewalks/Right of Way. Tenant shall not use the sidewalks to keep or sell merchandise.

q. The City reserves the right to make reasonable additions and modification to the Rules and Regulations, with cooperation with the Tenant.

r. Any and all window coverings require City approval prior to installation.

11. City's Remedies. If any default by Tenant shall continue uncured after thirty (30) days written notice of default from City to Tenant, City has the following remedies, in addition to all other rights and remedies provided by law or equity, to which City may resort cumulatively or in the alternative.

a. Termination of Lease. The City may, at the City's election, terminate this Lease by giving Tenant notice of termination. On the giving of the notice, all further obligations of City under this Lease shall terminate, Tenant shall surrender and vacate the Leased Premises in a broom clean condition, in accordance with subparagraph 34.c, and City may reenter and take possession of the Leased Premises and eject all parties in possession or eject some and not others or eject none. Termination under this paragraph shall not relieve Tenant from the payment of any sum then due to City or from any claim for damages previously accrued or then accruing against Tenant.

b. Storage. The City may, at City's election, store Tenant's personal property and trade fixtures for the account and at the cost of Tenant.

12. Tenant's Remedies. If any default by the City shall continue uncured after thirty (30) days written notice of default from Tenant to City, Tenant has the following remedies, in addition to all other rights and remedies provided by law or equity, to which Tenant may resort cumulatively or in the alternative.

a. Termination of Lease. The Tenant may terminate this Lease by giving City notice of termination. On the giving of the notice, all further obligations of under this Lease shall terminate, Tenant shall surrender and vacate the Leased Premises in a broom clean condition, in accordance with subparagraph 34.c.

b. Offset Rent. Tenant take any actions necessary to cure a default by making repairs or replacements required by City under this Lease and offset such expenses by reducing Tenant's rent.

13. Diligent Efforts. Notwithstanding anything to the contrary in this Section, in the event of Tenant's default is not a health or safety violation and cannot, because of the nature of the default, be cured within the thirty (30) days after City's notice thereof, then Tenant shall be deemed to be complying with such notice if, promptly upon receipt of such notice, Tenant 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.

14. City May Perform. The City shall have the right at any time, after ten (10) days notice to Tenant (or in case of emergency or a hazardous condition or in case any fine, penalty, interest or cost may otherwise be imposed or incurred), to make any payment or perform any act required of Tenant under any provision in this Lease, and in exercising such right, to incur necessary and incidental costs and expenses, including reasonable attorneys' fees. Nothing herein shall obligate City to make any payment or perform any act required of the Tenant, and this exercise of the right to so do shall not constitute a release of any obligation or a waiver of any default. All payments made and all costs and expenses incurred in connection with any exercise of such right shall be reimbursed to City by Tenant as additional rent.

15. Special Conditions.

a. Five (5) parking spaces in the Property can be made available for lease by the Tenant users, if they so desire. The users would enter into a lease agreement with the City Parking Utility, subject to rent, terms and conditions set forth by the City Parking Utility and approved by the City Common Council.

b. The Tenant shall in no way encumber, or allow to be encumbered, the City's title to the Leased Premises.

c. Upon the expiration or termination of this Lease, pursuant to Paragraph 26, the Tenant, at the Tenant's cost, shall restore the Leased Premises to a condition equivalent to that which existed as of the Commencement Date, minus typical and customary wear and tear. Restoration shall be accomplished within sixty (60) 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 restoration has been accomplished to the satisfaction of the City; however, during such restoration period the Tenant's right to use the Leased Premises shall be limited to restoration activities and shall not include the uses described in Paragraph 3. In the event the Tenant fails to accomplish said restoration, the City may cause the restoration to be accomplished at the Tenant's expense and with no liability or cost to the City. The City may waive or alter this requirement if, at its sole discretion, it so chooses.

BE IT FURTHER RESOLVED that the Common Council authorizes the grant of $500,000 to ALL from the Madison Capital Revolving Fund, pursuant to the Memorandum of Financial Term Sheet, to be paid back in full according to the rental schedule agreed upon in the LOI and included in the lease.

BE IT FINALLY 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 on a form to be approved by the City Attorney.



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