



## Legislation Text

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**File #:** 60352, **Version:** 1

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The estimated lease cost for this parcel is \$40,000 over the lease term of four months. Funding for this lease is to come from Metro's Facility Repairs and Improvements Capital Program (11229-85-140-144403). The temporary Metro bus parking is needed for renovations currently being done at 1101 E Washington Avenue. No additional City appropriation is required.

Authorizing the execution of a four-month Lease Agreement between the City of Madison and Journeymen Plumbers' and Gasfitters' Association, Local No. 75 for the City's lease of a portion of the property located at 2102 East Springs Drive for temporary Metro bus parking purposes. (17th AD)

WHEREAS, Journeymen Plumbers' and Gasfitters' Protective and Benevolent Association, Local No. 75 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada ("Lessor") is the owner of the former Menards warehouse, surrounding lumberyard, and parking lot located at 2102 East Springs Drive, Madison, Dane County, Wisconsin ("Property"), which is legally described on attached Exhibit A and depicted on attached Exhibit B; and

WHEREAS, the City of Madison ("City") desires to exclusively occupy and use a portion of the Property for Madison Metro Transit System ("Metro") bus parking, and Lessor desires to allow such occupancy and use, subject to the terms and conditions contained herein.

NOW, THEREFORE, the City and the Lessor ("Parties") mutually agree as follows:

1. Property. Lessor hereby grants the City a lease of the Property consisting of approximately sixty-five thousand square feet of outdoor storage within the Property, subject to the terms and conditions set forth in this Lease.
2. Term. This Lease shall be for an initial term of approximately four (4) months, beginning as of the date on which this Lease is executed ("Commencement Date"), and expiring at 11:59 p.m. on the date ("Expiration Date") that is the last day of the fourth (4<sup>th</sup>) full calendar month following the Commencement Date, subject to extension pursuant to Section 3 below.
3. Renewal. This Lease may be extended upon mutual agreement by the P
4. Termination.
  - a. The Lessor may terminate this Lease with thirty (30) days written notice if the City is in default of any of the terms or conditions of this Lease, including but not limited to the timely payment of rent, and does not correct the default within thirty (30) days of receiving written notice. In the event of a default under 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 City shall be deemed to be complying with such notice if promptly upon receipt of such notice the City 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.
  - b. The City may terminate this Lease with thirty (30) days written notice to the Lessor if the Lessor is in default of any term or condition of this Lease and has not corrected said default prior to the

expiration of said thirty (30) day period. In the event of a default which cannot, because of the nature of such default, be cured within said thirty (30) days, the Lessor shall be deemed to be complying with such notice if promptly upon receipt of such notice the Lessor 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.

- c. This Lease may be terminated by mutual consent of the Parties.
5. Use. The City shall use the Property exclusively for bus parking by Metro.
6. Rent. The City shall pay Rent to Lessor of Ten Thousand Dollars (\$10,000.00) per month, due in advance and without offset, demand or prior notice, on the Commencement Date and on the first day of each calendar month thereafter during the term of this Lease.
7. Access. The City shall have non-exclusive access to the Property at all times during the term of this Lease following the Commencement Date. The Lessor or its representatives shall have the right to enter upon the Leased Premises at any time to make any inspection it may deem expedient to the proper enforcement of any term or condition of this Lease, but shall not interfere with the City's use without giving twenty-four (24) hours' notice to the City in advance of such interference.
8. No Alterations. The City may not make any permanent alterations, installations, additions, or improvements in or to the Property without the prior written consent of Lessor, which consent may be withheld or conditioned in Lessor's sole and absolute discretion.
9. City's Responsibilities.
- a. The City accepts the Property in "as-is" condition.
  - b. The City shall, at the City's sole cost, be responsible for any damage resulting from the negligence of the City or its officers, officials, members, agents, employees, assigns, guests, invitees, or subcontractors.
  - c. The City shall maintain, at its sole cost, throughout the Initial Lease Term and any extension thereof personal property insurance in an amount to cover any and all loss or damage to the City's property (real and personal) located on the Property. In addition, the City shall carry commercial general liability coverage with a \$1,000,000 per occurrence limit and a \$2,000,000 aggregate limit. Upon request, the City will provide evidence of such coverage.
  - d. The City shall not cause or permit any hazardous substance to be used, stored, generated or disposed of on or in the Property including the City's agents, employees, contractors or invitees, without first obtaining Lessor's written consent. The obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this Lease.
  - e. The City shall not cause any liens to be filed against the Property and shall cause any liens filed to be removed within thirty (30) days of expiration or termination of this Lease, which obligation shall survive any cancellation, expiration, or termination, for any reason, of this Lease.
10. Lessor's Responsibilities.
- a. The Lessor shall, at the Lessor's sole cost, be responsible for any damage resulting from the negligence of the Lessor or its officers, officials, members, agents, employees, assigns, guests,

invitees, or subcontractors.

b. Lessor shall maintain access ways to the Property, and shall remediate, or cause to be remediated, any condition existing that impairs the City's use of the Property.

11. Insurance by Lessor. Beginning on the Lease Commencement Date and continuing throughout the term of the Lease, the Lessor shall carry commercial general liability insurance covering as named insured the Lessor, with a minimum limit of \$1,000,000 per occurrence and a \$2,000,000 aggregate limit. This policy shall also be endorsed for contractual liability in the same amount, 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 Lessor shall furnish the City with a certificate of insurance.
12. Rights Upon Expiration or Termination. Upon the expiration or termination of this Lease for any cause, the City's rights in the Property shall cease, and the City shall immediately remove all of its property from the Property and surrender the Property to Lessor in a condition equivalent to that which existed prior to the date that the City first occupied the Property, reasonable wear and tear excepted.
13. Definition of City and Lessor. The terms "City" and "Lessor" 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 successors and assigns.
14. Notices. All notices to be given under the terms of this Lease shall be signed by the person sending the same, may be delivered by email to an officer or duly authorized representative of the other party, or may be sent by United States Postal Service or a nationally recognized overnight carrier, to the address of the Parties specified below:

For Lessor: Plumbers 75  
Steve Breitlow  
11175 West Parkland Avenue  
Milwaukee, WI 53224

For the City: Madison Metro Transit Department  
Attn: Manager  
1245 E. Washington Ave, Suite 201  
Madison, WI 53703

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.

15. Assignment. The City shall not assign this Lease and privileges hereunder. Any attempted assignment or delegation shall be void.
16. Non-Discrimination. In the performance of its obligations under this Lease, Lessor agrees not to discriminate 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, gender identity, political beliefs, or student status. Lessor 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, sexual orientation, gender identity or national origin.

17. Indemnification. The Parties shall be responsible for their 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.
18. Relationship of the Parties. Nothing contained herein nor the acts of the Parties shall be deemed or construed to create the relationship of principal and agent, partnership, joint venture, or similar relationship or arrangement, it being understood that the relationship between the Parties is solely that of lessor and lessee.
19. Governing Law. This Lease shall be construed and enforced pursuant to the laws of the State of Wisconsin, without regard to its conflict of laws doctrine.
20. This Lease may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Lease may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Lease may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch.137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Lease may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties hereto, whether or not a hard copy is also delivered. Copies of this Lease, fully executed, shall be as valid as an original.
21. Entire Agreement. All terms and conditions with respect to this Lease are expressly contained herein, and the Parties agree that neither the City nor Lessor has made any representations or promises with respect to this Lease not expressly contained herein. No alteration, amendment, change, or addition to this Lease shall be binding upon the Parties unless in writing and signed by them.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to sign, accept, and record any and all documents and legal instruments required to complete the transactions contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney.