



## Legislation Text

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**File #:** 64251, **Version:** 1

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The proposed lease term is for 10 years and will automatically continue for successive terms of one year each, unless otherwise terminated in accordance with the provisions of the Lease. Annual rent payable for the first lease year will be in the amount of \$5,784.05 and will be deposited into the General Fund. Rent will be subject to a five (5) percent increase every five years.

Authorizing the Mayor and City Clerk to execute a lease with Gently Automotive LLC (d/b/a Apex Auto Sales and Repair), located at 3074-3076 East Washington Avenue, allowing for the use of the adjacent City-owned property located at 3098 East Washington Avenue for an expanded parking lot. (12 A.D.)

WHEREAS, the City of Madison (the "City") is the owner of the parcel located at 3098 East Washington Avenue (the "City's Property"), which is reserved for future transportation purposes; and

WHEREAS, Gently Automotive LLC is the land contract vendee of abutting property located at 3074-3076 East Washington Avenue (the "Abutting Property"); and

WHEREAS, Gently Automotive LLC operates Apex Auto Sales and Repair at the Abutting Property and desires to lease the City's Property for the purpose of constructing, maintaining and operating an expanded parking lot for its automobile sales inventory; and

WHEREAS, City Engineering Division staff have reviewed and approve of the lease arrangement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease (the "Lease") with Gently Automotive LLC (the "Lessee"), subject to the following terms and conditions:

1. The Lessee's Abutting Property and the City's Property are legally described on attached Exhibits A and B, respectively, along with the Leased Premises that is depicted on attached Exhibits C and D. The Leased Premises is currently unimproved and consists of approximately 7,978 square feet.
2. The term of the Lease shall be ten (10) years. The Lease will automatically continue for successive terms of one (1) year each, unless otherwise terminated in accordance with the provisions of the Lease.
3. Annual rent payable to the City shall be \$5,784.05 (7,978 sq. ft. x \$7.25/sq. ft. x 10%) and shall increase by five percent (5%) every five (5) years.
4. The Lessee shall use the Leased Premises for the construction, maintenance and operation of a parking lot (the "Parking Lot Improvements"), which use shall be ancillary to the business operations at the Abutting Property. The Leased Premises shall be used exclusively by the Lessee and the employees, tenants and invitees of the Abutting Property. The Leased Premises shall not be used for parking by the general public, with general public defined as all persons other than the Lessee and the employees, tenants and invitees of the Abutting Property.
5. The Lessee shall be permitted to sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey its interest in the 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 Abutting Property to the same purchaser or transferee of the

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 the leasehold interest shall not be severed from the ownership of the Abutting Property. All such Transfers shall be subject to all of the terms of the 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 the 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.

6. The Lessee shall not commence construction of the Parking Lot Improvements without the written approval of the plans and specifications by the City Engineer. Except for the initial construction undertaken in accordance with the approved plans, any construction, paving, modification, landscaping improvements or alterations to the Leased Premises exceeding \$5,000 in cost for services and materials, and any plans for any of the same, are subject to written approval of the City Engineer prior to any work taking place. All normal periodic repairs, maintenance, and replacement in kind can be performed by the Lessee without written approval by the City. All improvements and construction done by the Lessee shall comply with all applicable federal, state and local laws, statutes, regulations and ordinances and shall be done in a workmanlike manner.
7. The Lessee 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. Maintenance responsibilities include, but shall not be limited to, any required paving, repaving, repairs, striping, snow and ice removal, removal of garbage and debris, landscape upkeep and parking enforcement. No exterior storage of materials or equipment is permitted on the Leased Premises except the temporary and orderly placement of items in conjunction with maintenance or repair activities.
8. The Lessee shall be solely responsible for and promptly pay all charges for water, electricity, sewer, storm water, and any other utility used upon or furnished to the Leased Premises.
9. The Lessee agrees to hold the City harmless for any loss of parking or for noncompliance with City zoning regulations that may result from the expiration or termination of the Lease.
10. The City shall have the right to terminate the Lease upon a minimum of two hundred seventy (270) days written notice, in the event the Leased Premises in the sole discretion of the governing body of the City are desired for any public purpose or use. The Lessee shall have the right, at its sole option, to terminate the Lease by giving the City a minimum of thirty (30) days written notice of termination.
11. 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, members, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of the Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. This paragraph shall survive termination and assignment or transfer of the Lease.
12. 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. The 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 the 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 the Lease is in effect, the Lessee shall provide a renewal certificate to the City for approval.

13. 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 except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "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.
14. 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.

BE IT 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.

BE IT STILL FURTHER RESOLVED that execution of the Lease by the parties shall be contingent upon the Lessee obtaining approval from the City of a revised site plan depicting the expanded parking lot.