



## Legislation Text

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### Fiscal Note

The proposed resolution authorizes a 15-year lease agreement between the City of Madison and Madison Metropolitan School District for a portion of the City's property located at 330 and 342 East Lakeside Street for the operation of the Madison School & Community Recreation program. MMSD has approved to pay up front \$400,000, which will fund the difference in the Property Capital Budget (amended by adopted RES-21-0118, File ID 63918) and pay for a portion of the Leased Premises, which will be specified in the design/bid exhibit to the Lease and collectively defined as the "City West Improvements". MMSD agrees to contribute \$200,000 before June 30, 2021 and \$200,000 upon completion of the City West Improvements. Base rent for the space is listed in the attachments and will total \$1,286,095 over the 15-year term, payable to the Parks Division facility rental. No additional City appropriation is required with adoption of this resolution.

### Title

Authorizing the execution of a 15-year lease agreement between the City of Madison and Madison Metropolitan School District ("MMSD") for a portion of the City's the property located at 330 and 342 East Lakeside Street for the operation of the Madison School & Community Recreation ("MSCR") program, including their administrative offices and corresponding public recreational programming.

### Body

WHEREAS, the City of Madison ("City") is the owner of the property located at 330 and 342 East Lakeside Street in the City of Madison, Dane County, Wisconsin (the "Property"), of approximately 3.6 acres that is adjacent to Olin Turville Park; and

WHEREAS, the Property is improved with an existing 43,879 square foot office building (the "Building") on the 330 E. Lakeside Street, with two sections therein-an east wing ("East Wing") and a west wing ("West Wing"); and

WHEREAS, Parks is interested in leasing the West Wing of the Building to Madison Metropolitan School District ("MMSD") to provide additional public services from the Property consistent with PR zoning, including any conditional uses; and

WHEREAS, the City Real Estate has been working with Parks and Facilities Management staff, to evaluate the cost to upgrade the Building to replace/install systems, improve accessibility, make health and safety compliance modifications and make certain improvements to the West Wing ("City West Improvements"); collectively this work is estimated at \$3.95 million ("Property Capital Budget"); and

WHEREAS, the City approved \$1.87 million towards the 2021 Property Capital Budget, and amended said capital budget on February 23, 2021 via RES-21-000118 by reallocating \$1.76 million towards this project. MMSD has approved to pay up front \$400,000, which will fund the difference in the Property Capital Budget and pay for a portion of the City West Improvements; and

WHEREAS, the City and MMSD have a signed Letter of Intent dated April 22, 2021, which substantially outlines the proposed terms of a lease agreement ("Lease") at the Property.

NOW THEREFORE BE IT RESOLVED that the Common Council authorizes the execution of a Lease with the Madison Metropolitan School District materially, though not exclusively, the following terms and conditions on a form approved by the City Attorney.

1. Property. The property is located at 330 and 342 E. Lakeside Street, Madison, WI 53715 ("Property"), which contains a building thereon ("Building") with two sections: an east wing ("East Wing") and a west wing ("West Wing").

2. Leased Premises. The leased premises is the entire West Wing consisting of three floors with a gross rentable area of roughly 17,676 square feet ("s.f.") plus 1,373 s.f. in the East Wing (including an allocated shared hall area) ("East Wing Leased Premises") as depicted in Exhibit A for a total of 19,049 s.f. (collectively the "Leased Premises").
3. Use. MMSD will occupy and use the Leased Premises for operation of the Madison School & Community Recreation ("MSCR") program, including their administrative offices and corresponding public recreational programming and activities related thereto, and for no other purposes whatsoever without the City's prior written consent, which consent the City may withhold in its sole discretion. All uses must be in accordance with PR zoning as described in Madison General Ordinance 28.095, including any conditional uses, and the Leased Premises shall not be used for any illegal purpose.
4. Condition of Leased Premises. The City is delivering the Leased Premises to MMSD on the "Effective Date" (defined below) on an as-is basis. MMSD shall conduct its own due-diligence on all systems and equipment in the Leased Premises before the Effective Date. MMSD shall be responsible at its cost to comply with all required American with Disabilities Act ("ADA") and applicable code requirements, and complete any necessary upgrades or replacements of any systems, devices, and equipment in the Leased Premises. The City is responsible to comply with all required ADA and applicable code requirements, and complete any upgrades to the Common Areas and the Exterior of the Building at its cost.

The City will make certain improvements to the Leased Premises after the Effective Date, which will be specified in the design/bid exhibit to the Lease and collectively defined as the "City West Improvements".

5. MMSD Improvements. MMSD will pay for the build-out of the MMSD Improvements, and contribute (per Paragraph 6) towards the City West Improvements.
  - a. Any subsequent changes or alterations requested by MMSD shall follow the terms defined in the Lease.
  - b. At the end of the Base Lease Term or Option Periods as defined below, all fixed items of MMSD Improvements and all fixtures, improvements and equipment installed by MMSD for/to the heating and air-conditioning system, mechanical, access, security elevator, electrical, plumbing and all alterations and other improvements by MMSD shall become the property of the City and shall not be removed from the Leased Premises, Building or Property unless written request is made by the City to MMSD to remove the same at its cost (including any restoration of any area where removed). All trade fixtures, furniture, furnishings and signs installed in the Leased Premises or on the Building or Property by MMSD shall remain the property of MMSD and shall be removed upon the expiration or termination of the Lease.
6. City West Improvements.
  - a. MMSD agrees to contribute Four Hundred Thousand Dollars (\$400,000.00) towards the City West Improvements payable as follows: \$200,000.00 (before June 30, 2021) and \$200,000.00 upon completion of the City West Improvements.
  - b. Any capital improvements desired by MMSD for its use of the Leased Premises, beyond the agreed upon City West Improvements project that arise after the Lease is executed or during construction, will be at MMSD's sole expense. Any of these improvements are subject to approval by the Board of Park Commissioners and must be approved by the City in writing prior to work commencing.

7. Base Lease Term. The terms and conditions of the Lease shall commence on the Effective Date. The Lease shall be for an initial term of fifteen (15) years (the "Base Lease Term"), subject to early termination pursuant to the terms of the Lease. The Base Lease Term shall commence when the City completes the City West Improvements (the "Commencement Date") and expire fifteen (15) Lease Years thereafter. The term "Lease Year" shall mean a full one (1) year fiscal period. The first Lease Year shall begin on the Commencement Date. Each succeeding Lease Year shall begin on the anniversary of the Commencement Date.
8. Base Rent. The Base Rent schedule is attached hereto as Exhibit A. The first monthly Base Rent payment shall be due on the Commencement Date and thereafter on the first day of each calendar month.
9. Option to Renew. If, at the end of the Base Lease Term of the Lease, MMSD is not in default under the terms and conditions of the Lease, then MMSD shall have the right to extend the Base Lease Term for two (2) consecutive five (5) year terms ("Option Period One" and "Option Period Two" respectively; 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 Base Rent for the Option Periods is outlined in Exhibit A.

If MMSD desires to renew the Lease, MMSD must give written notice to the City a minimum of one (1) year prior to the expiration of the Base Lease Term. With respect to Option Period Two, the City may need to use the Leased Premises or any portion thereof for any public use or purpose at the sole discretion of the City. If so, the City will provide notice to MMSD fifteen (15) months prior to the expiration of Option Period One, if exercised. If the City needs all of the Leased Premises, then the Lease will expire at the end of Option Period One. If the City needs a portion of the Leased Premises, then the parties shall analyze the remaining space to be included in the Leased Premises and agree upon the terms of the Option Period Two.

10. Common Areas. The City grants to MMSD and MMSD's on-site employees, agents, customers, invitees, vendors, licensees, and contractors the non-exclusive use right to use, in common with all others to whom the City has or may hereafter grant rights to use the same, the "Common Areas" located on the Property. The term "Common Areas" is defined as the parking area (excluding any parking stalls reserved by the City and the driveway to the City loading area and the City loading area); sidewalks; driveways; grounds; the adjacent shoreline to the Property and all other areas or improvements which may be provided by the City for the common use or benefit of occupants of the Property.

The City reserves the right to control and manage the Common Areas in its sole discretion and to establish rules and regulations for the use thereof.

The City shall be responsible for cleaning, maintaining and repairing the Common Areas, unless any area is damaged by activities and/or actions of MMSD or MMSD's employees, agents, customers, invitees, vendors, licensees, and contractors.

The City agrees to summer grounds maintenance (mowing, string trimming, tree maintenance, etc.) and snow removal for parking lot and sidewalks on the Property only on weekdays during the City's business hours, excluding any City holidays.

The City agrees to pay the electric bills for the site lighting.

MMSD shall be permitted to reserve 15 parking stalls ("MMSD Parking Stalls") along the west side of the parking lot for its guests and visitors. MMSD shall pay for the cost of the signs specifying the assigned

stalls as reserved for MSCR, weekdays 7AM to 5PM, excluding City holidays. MMSD is responsible policing the MMSD Parking Stalls.

MMSD and the City will share five (5) accessible stalls located between the East Wing and West Wing. MMSD shall only use the remainder of the parking lot for its staff working in the Leased Premises and its guests, and shall not park in any City reserved stalls. MMSD shall work with the City to include permit parking on the parking lot if necessary.

11. City's Leased Premise's Responsibilities. The City is responsible at its costs for the maintenance, repair and replacement of only the following in or servicing the Leased Premises (collectively the "City LP MRR"): foundation; fire suppression supply line and isolation valves to each floor of the West Wing installed by the City; exterior openings at the exterior West Wing wall- exterior doors and windows; the main sanitary plumbing pipes to the exterior of the West Wing; hot water heater and water softener; boiler; the main fire alarm panel in the East Wing (excluding the fire alarm panel and related devices in the Leased Premises) and structural portions of the Leased Premises (except interior walls). MMSD shall give the City written notice of the necessity for repairs/replacements to the Leased Premises coming to the attention of MMSD, following which the City shall have a reasonable time to undertake and complete such work.

The City is also responsible at its cost for the maintenance, repair and replacement of the boiler, water heater and softener situated in the East Wing that services the entire Building.

Unless caused by the City's sole negligence, 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.

The City is responsible at its cost for the operating costs for only the following in the Leased Premises (collectively the "City LP OC"): West Wing elevator area of refuge contract (excludes the phone line by MMSD); West Wing elevator inspections; fire alarm monitoring and cleaning the exterior windows of the Leased Premises.

12. MMSD's Responsibilities. MMSD 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 of the Property. Other responsibilities of MMSD will be detailed in the design/bid exhibit to the Lease and below:
- a. MMSD is responsible at its cost for the maintenance, repair and replacement of its MMSD Improvements, any new alterations, and all items not covered by the City described above as the City LP MRR.
  - b. MMSD shall (i) maintain, repair and replace when necessary all HVAC (the entire system as defined in Division 23 of the design/bid exhibit to be attached to the lease) and the elevator (including equipment; controls and panels) 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 or agreement for the maintenance of all such HVAC equipment with a licensed HVAC repair and maintenance contractor selected from an approved list of contractors provided by the City, which contract or agreement provides for the periodic inspection and servicing of the HVAC equipment biannually. Any upgrades/replacements to the elevator controls and/or panels should be nonproprietary. MMSD shall furnish City with copies of all such service contracts or

agreements, which shall provide that they may not be canceled or changed without at least 30 days' prior written notice to the City.

- c. MMSD 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. MMSD is also responsible for keeping entrances to the Leased Premises clear of snow, including the back stairs and ramp to the West Wing loading area. MMSD will also be responsible for snow and ice removal on weekends or City holidays if MMSD desires access to the Leased Premises outside of the City's normal business hours. The application of salts or de-icing chemicals should be used sparingly, and MMSD's staff assigned to lead or oversee this task must be certified through The Wisconsin Salt Wise Certification Program.
- d. MMSD is responsible for the installation, maintenance, and replacement of its designated exterior "MMSD Trash Enclosure Area" located on the Property as noted on Exhibit D, including the trash enclosure and fencing surrounding the trash bin(s), the pad the trash bin(s) are situated on, as well as the area immediately outside said space including any damaged pavement from the rolling of the trash bin(s). This includes removal and cleaning of any residual trash or liquids left on the ground after the removal of MMSD's trash and recycling bins. Maintenance responsibilities of the MMSD Trash Enclosure Area also includes the repair of any damage to the doors, frames, walls and fixtures solely caused by MMSD and/or its customers, members, employees, agents, invitees, contractors or licensees.
- e. If approved by the City, MMSD is responsible for the installation, maintenance, and replacement of an exterior storage shed "MMSD Shed" located on the Property near the MMSD Trash Enclosure Area. MMSD's maintenance responsibilities of the MMSD Shed includes the cleaning of the exterior walls, repair of any damage to the exterior walls, roof, and doors.
- f. MMSD shall provide all necessary cleaning supplies and labor to maintain in a clean and sanitary condition the Leased Premises or Common Areas used by MMSD activities. Any custodial services, and any chemicals, trash-liners, soap and paper used by MMSD pursuant to its obligations under this provision, are required to be in accordance with the City's Green Cleaning Program and comply with the green product standards, specifications and practices of this Program. MMSD is required to be familiar with the applicable standards of the City's Policy for a Sustainable Green Cleaning Program. The failure to abide by the requirements of this Program shall be a default subject to terms further described in the Lease.
- g. MMSD is responsible for weekly waste and recycling removal, or more frequently as needed, at its cost. MMSD shall either: (i) haul the trash off site at its cost or (ii) contract with a third party waste disposal company at its cost to have trash and recycling bins placed in the MMSD Trash Enclosure Area. 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: (i) the temporary and orderly placement of items in conjunction with maintenance, repair or construction activities or (ii) in the MMSD Shed.
- i. MMSD shall submit by January 1st of each year, an annual community and neighborhood impact plan to the Board of Park Commissioners addressing how MSCR is impacting the community.
- j. MMSD shall submit by January 1st of each year an annual operating/programming plan for the East Wing Leased Premises.

- k. If MMSD decides to install an interior security system and/or a FOB/door access system, which needs to be approved by the City, it should be the same make/model as the City's system. MMSD will be responsible at its cost to install, maintain and replace said systems. MMSD shall not install any exterior or exterior facing cameras on the Property.

13. MMSD Operating Expenses. As of the Effective Date, MMSD will be responsible for all operating costs, except for the City LPOC, related to the Leased Premises including but not limited to: water; landfill; trash collection service; sewer; storm water and urban forestry service; telephone lines, including the phone line required for the elevator; internet and data charges; routine special assessments levied by the City or others; personal property taxes; licenses; commercial liability; worker's compensation; employer's liability; interior window washing/cleaning; FOB access system; interior security system and other items noted in Exhibit B or approved as an alteration by the City during the Lease Term.

In addition, MMSD will be responsible for 50% of the gas costs for the Building since this will not be separately metered. MMSD will make semi-annual gas cost payments to the City based on estimates. After each Fiscal Year, the City will reconcile the estimated gas payments with the actual gas costs, and send MMSD a statement with said detail therein. Any amount due to the City by MMSD shall be paid within 30 days of the invoice sent. If a credit is due to MMSD, then it will be applied to the next estimated gas payment due to the City. The parties will discuss heating set back requirements (timing/degrees) based on what boiler is installed by the City, and said details will be incorporated into the Lease. When MMSD commences construction, it shall pay for temporary electric utilities until the City completes the installation of the electric meter in the Leased Premises.

14. City Insurance. The City agrees to procure and maintain property coverage for the Building. For any MMSD Improvements and subsequent alterations made to the Building by MMSD, MMSD agrees to pay the City's Property insurance deductible for losses relating thereto. City also agrees to procure and maintain a commercial general liability insurance policy insuring the Common Areas.

BE IT FINALLY RESOLVED that the Mayor and Clerk are hereby authorized to execute, deliver and record the Lease and all documents, and take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution in a form approved by the City Attorney.