



## Legislation Text

---

**File #:** 09007, **Version:** 1

---

### **Fiscal Note**

Initial annual rent of \$271.11 will be deposited into Account No. GN01-78220. Rent during years 2 through 5 shall be subject to adjustment based on any percentage change in land value. After lease year 5, rent shall be subject to a 5% increase every five (5) years.

### **Title**

Authorizing the Mayor and City Clerk to execute a Subterranean and Air Space Lease with Arist Christ, the owner of property located at 226 State Street, to accommodate the existing encroachments of an underground vault, a building cornice, a business identification sign and below-awning lighting into the State Street public right-of-way.

### **Body**

WHEREAS, Arist Christ (the "Owner") is the owner of certain property located at 226 State Street (the "Owner's Property"); and

WHEREAS, an engineer's encroachment report prepared in connection with the recent State Street reconstruction project revealed that a building cornice, business identification sign, below-awning lighting and underground vault appurtenant to the Owner's Property encroach into the subterranean and air space of the State Street public right-of-way; and

WHEREAS, it is in the public interest to document and regulate existing encroachments in the public right-of-way; and

WHEREAS, the Owner desires to enter into a Subterranean and Air Space Lease with the City of Madison to accommodate such encroachments into the public street right-of-way; and

WHEREAS, the terms of a Subterranean and Air Space Lease have been negotiated between the Owner and the Real Estate Section; and

WHEREAS, the City Attorney's office has reviewed and approved the Subterranean and Air Space Lease as to form.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a Subterranean and Air Space Lease ("Lease") with Arist Christ (the "Owner") to accommodate the existing subterranean encroachment of an underground vault ("Vault") and the existing air space encroachments of the Owner's building cornice ("Cornice"), identification sign ("Sign") and below-awning lighting ("Lighting") at 226 State Street (the "Owner's Property") into the adjacent State Street public right-of-way, subject to the following terms and conditions:

1. The "Leased Premises" shall consist of approximately 168 square feet of subterranean space and approximately 32.16 square feet of air space within the State Street public right-of-way, as described below and depicted on Exhibit A.
2. The term of the Lease shall be for a period of 50 years, and the Owner shall have the option to renew the Lease for an additional term of 50 years.

3. During the first five (5) years of the Lease, the Owner shall pay to the City an annual rent equal to three percent (3%) per story of the current assessed per square foot land value of the Owner's Property, multiplied by the square footage area of the Leased Premises. Annual rent for the first year of the Lease is calculated as follows:

Feature	Area of Encroachment (square feet)	Height of Encroachment	Rent Calculation*	Annual Rent for Lease Year 1
Vault	21 ft. x 8 ft. = 168 sf	1 story	168 sf x \$45 x .3%	\$226.80
Cornice	21 ft. x .5 ft. = 10.5 sf	1 story	10.5 sf x \$45 x 3%	14.18
Sign	.33 ft. x 2 ft. = .66 sf	2 stories	.66 sf x \$45 x 6%	1.78
Lighting	21 ft. x 1 ft. = 21 sf	1 story	21 sf x \$45 x 3%	28.35
			Lease Year 1 Total Rent:	\$271.11

4. Commencing in year six (6), rent shall increase by 5% per each five (5) year period and shall no longer be adjusted based on the assessed value of the Owner's Property.
5. In the event the Owner's Property becomes tax-exempt, rent shall be calculated based on the last annual assessed land value of the Owner's Property prior to it becoming tax-exempt.
6. The Owner shall be permitted to sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey its interests 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 Owner's Property to the same purchaser or transferee of the Lease and the improvements located on the Leased Premises.
7. No further construction, modification, improvement, alteration, or remodeling of the Leased Premises shall be undertaken without prior written approval of the City's Real Estate Section, and any plans for any of the same are subject to written approval of the City's Real Estate Section. In all cases, the Owner is responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction activity.
8. The City shall have no responsibility or liability for any maintenance of the Leased Premises or improvements in the Leased Premises and the City shall have no responsibility or liability for any damage to the Leased Premises, improvements, facilities or contents, caused by moisture or water in any manner, and the Owner shall hold the City harmless therefrom.
9. Upon the expiration or termination of the Lease, the Owner, at its sole cost, shall remove the improvements from the Leased Premises, including removal of the Vault in accordance with MGO 10.31 (4). The City may waive or alter this removal requirement at its sole discretion.
10. The Owner shall be required to carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the City's Risk Manager: bodily injury, death and property damage of \$1,000,000 per occurrence.
11. The Owner shall be liable to and agree 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 Owner or its officials, officers, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees.

12. The Owner shall represent and warrant 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 Owner shall further agree 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.
13. The City shall have the right to terminate the Lease upon 30 days written notice in the event of the Owner's default or upon 180 days written notice in the event the Leased Premises are needed for any public use or purpose.
14. The Owner shall have the right, at its sole option, to terminate the Lease upon 180 days written notice.

#### Description of the Leased Premises

Area of Vault Encroachment: Certain subterranean space within the State Street right-of-way adjacent to the Owner's Property, as identified on attached Exhibit B. Said subterranean space applies to rights below the ground surface. Upon review of topographic survey information provided by MSA Professional Services, Inc., rights are estimated to commence at an elevation of 30.00 feet, and terminate at an elevation of 20.00 feet. Elevations herein are referenced to the City of Madison Datum. Said subterranean space contains approximately 168 square feet in area.

Area of Cornice Encroachment: Certain air space within the State Street right-of-way adjacent the Owner's Property, as identified on attached Exhibit B. Said air space applies to rights above the ground surface and is estimated to commence at an elevation of 63 feet, and terminate at an elevation of 65 feet. Elevations herein are referenced to the City of Madison Datum. Said air space contains approximately 10.5 square feet in area.

Area of Sign Encroachment: Certain air space within the State Street right-of-way adjacent the Owner's Property, as identified on attached Exhibit B. Said air space applies to rights above the ground surface and is estimated to commence at an elevation of 45 feet, and terminate at an elevation of 60 feet. Elevations herein are referenced to the City of Madison Datum. Said air space contains approximately .66 square feet in area.

Area of Lighting Encroachment: Certain air space within the State Street right-of-way adjacent the Owner's Property, as identified on attached Exhibit B. Said air space applies to rights above the ground surface and is estimated to commence at an elevation of 38 feet, and terminate at an elevation of 39 feet. Elevations herein are referenced to the City of Madison Datum. Said air space contains approximately 21 square feet in area.

Note: The above encroachments are depicted on attached Exhibit A.