



Legislation Text

File #: 10453, **Version:** 1

Fiscal Note

Initial annual rent of \$750 will be deposited into the General Fund. Rent shall increase by \$250 every five years.

Title

Authorizing the Mayor and City Clerk to execute an air space lease with SSM Health Care of Wisconsin, Inc. for use of the public right-of-way over South Brooks Street for an existing enclosed pedestrian skywalk connecting St. Mary's Hospital buildings.

Body

WHEREAS, SSM Health Care of Wisconsin, Inc. ("SSM") is the owner of 707 South Mills Street in the City of Madison, and such property is improved with a building commonly known as St. Marys Hospital; and

WHEREAS, St. Marys Hospital Campus Condominium Owners Association, Inc., a Wisconsin non-stock corporation (the "Association") is the manager of property located at 700 South Park Street, and such property is improved with a building commonly known as the Dean and St. Marys Outpatient Center; and

WHEREAS, 707 South Mills Street and 700 South Park Street are hereinafter collectively referred to as the "Abutting Properties" (singularly, an "Abutting Property") and the buildings located thereon are hereinafter collectively referred to as the "Buildings"; and

WHEREAS, SSM has constructed an enclosed pedestrian skywalk ("Skywalk") over the South Brooks Street public right of way connecting the Buildings; and

WHEREAS, the City and SSM desire to enter into a lease for the air space over the South Brooks Street public right of way occupied by the Skywalk, and the Association and the Owner of Unit 1 of the St. Marys Hospital Condominium (the "Owner") desire to consent to such lease to signify their consent to the attachment of the Skywalk to their property; and

WHEREAS, the lease of the necessary air space over public right of way is in accordance with Wisconsin Statutes Section 66.0915(4).

NOW, THEREFORE, it is mutually agreed as follows:

1. The City shall lease to SSM certain air space over the South Brooks Street public right-of-way (the "Leased Premises") for the construction, maintenance and operation of the Skywalk connecting the Buildings. The Leased Premises are described below and are depicted on Exhibit A. The Association and the Owner shall consent to such lease (the "Lease") to signify their consent to the attachment of the Skywalk to their property.
2. The Lease shall be for a term of ninety-nine (99) years, commencing as of January 1, 2008 (the "Effective Date") and expiring on December 31, 2107. The term "Lease Year" shall mean a full one (1) year period. The first Lease Year shall begin on the Effective Date. Each succeeding Lease Year shall begin on the anniversary of the Effective Date.
3. For the period from the Effective Date through the end of Lease Year five (5), SSM shall pay to the City

annual rent of \$750.00. Beginning on the fifth anniversary of the Effective Date and on the anniversary of each subsequent five (5) year period throughout the term of the Lease, the annual rent shall increase by \$250.00.

4. SSM shall use the Leased Premises for the construction, maintenance and operation of the Skywalk. The Skywalk shall be used exclusively by the employees, agents, permittees and invitees of SSM and owners of the Units in the St. Marys Hospital Condominium.
5. SSM shall construct the Skywalk in accordance with plans and specifications reviewed and approved by the City. No further construction, modification, improvement, alteration, or remodeling of the Skywalk shall be undertaken without prior written approval of the City's Real Estate Section, and any plans for any of the same shall be subject to written approval of the City's Real Estate Section. In all cases, SSM shall be responsible for following all applicable ordinances, codes, statutes and laws, and obtaining all permits required for any construction activity. Title to all improvements installed or erected by SSM on the Leased Premises shall be in and remain the property of SSM for and during the entire term or proper assignment of the Lease.
6. SSM shall, at its own expense, keep and maintain the Skywalk 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. SSM shall be responsible for the cost of and contracting for all repairs and replacements of the Skywalk during the term of the Lease. SSM shall be responsible for replacing all broken glass, fixtures and fittings with material of the same size, style, and quality of that broken, damaged or misplaced.
7. The City shall have no responsibility or liability for any maintenance of the Skywalk or improvements in the Leased Premises, and the City shall have no responsibility or liability for any damage to the Skywalk, improvements, facilities or contents, in any manner, and SSM shall hold the City harmless therefrom.
8. SSM shall be solely responsible for and promptly pay all charges for heat, electricity, and any other utility used upon or furnished to the Skywalk and the Leased Premises. The obligation of SSM to pay for such utilities shall commence as of the date on which possession of the Leased Premises was delivered to SSM, without regard to the formal Effective Date of the Lease.
9. SSM shall be liable to and shall 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 SSM, the Association, or the Owner, or their officers, officials, officers, agents, employees, assigns, guests, invitees, or subcontractors, in the use of the Leased Premises or in the performance of the Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. Additionally, SSM shall 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 \$5,000,000 per occurrence. The policy or policies shall name the City as an additional insured. As evidence of this coverage, SSM shall furnish to the City a certificate of insurance on a form provided by the City.
10. SSM shall represent and warrant that its use of the Leased Premises will not generate any hazardous substance, and that 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. SSM 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.

11. In the performance of the services under the Lease, SSM 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, political beliefs or student status. SSM further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under the Lease because of race, religion, color, age, disability, sex or national origin.
12. The Skywalk shall conform where applicable to COMM 61.05 of the Wisconsin Administrative Code, Madison General Ordinance 39.05, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by SSM.

Legal Description of the Leased Premises

That portion of dedicated South Brooks Street of Certified Survey Map Number 11314, as recorded in Volume 68, Pages 229-232, Document Number 4017355, all being located in the NW ¼ of the NW ¼ of Section 26, Township 07 North, Range 09 East in the City of Madison, Dane County, Wisconsin which lies between two horizontal planes; the first horizontal plane being the lowermost portion of the skywalk above said South Brooks Street, having an elevation of 25.00 feet, City of Madison datum which originated from a Brass Cap Monument marking the Northwest Corner of Section 26, T07N-R09E having an elevation of 867.04 feet on the National Geodetic Vertical Datum of 1929 (City of Madison vertical datum is equal to National Geodetic Vertical Datum of 1929 - 845.60 feet) and the second horizontal plane being the uppermost portion of the skywalk above said South Brooks Street being parallel with and nineteen (19) feet above the first horizontal plane having an elevation of 44.00 feet City of Madison datum; said horizontal planes lying within the following described traverse:

Commencing at the Northeast corner of Lot 1 of Certified Survey Map Number 11314 as recorded in Volume 68, Pages 229-232, Document Number 4017355; thence along the West line of South Brooks Street on the arc of a curve concave Easterly having a radius of 333.00 feet and whose chord bears S17°00'23"E, 120.22 feet; thence continuing along said West line on the arc of a curve concave Westerly having a radius of 764.42 feet and whose chord bears S19°10'58"E, 218.68 feet to the point of beginning; thence N69°46'28"E, 66.79 feet to the East line of South Brooks Street; thence along said East line on the arc of a curve concave Westerly having a radius of 830.42 feet and whose chord bears S11°12'44"E, 14.18 feet; thence S69°46'28"W, 66.99 feet to the West line of South Brooks Street; thence along said West line on the arc of a curve concave Westerly having a radius of 764.42 feet and whose chord bears N10°25'36"W, 14.21 feet to the point of beginning.