



## Legislation Text

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**File #:** 22812, **Version:** 1

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### **Fiscal Note**

No expenditure is required.

### **Title**

Authorizing the Mayor and City Clerk to execute an air space lease with the Board of Regents of the University of Wisconsin System for use of the public right-of-way over East Campus Mall for an enclosed elevated gallery connecting two buildings comprising the Chazen Museum of Art.

### **Body**

WHEREAS, the Board of Regents of the University of Wisconsin System ("UW") is the owner of certain real property located at 800 University Avenue and 419-433 East Campus Mall in the City of Madison (collectively, the "Abutting Properties"); and

WHEREAS, the Abutting Properties are improved with two buildings (the "Buildings") that are collectively commonly known as the Chazen Museum of Art; and

WHEREAS, the UW is constructing an enclosed elevated gallery ("Gallery") over the East Campus Mall public right of way connecting the Buildings; and

WHEREAS, the City and the UW desire to enter into a lease for the air space over the East Campus Mall public right of way to be occupied by the Gallery; 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 the UW certain air space over the East Campus Mall public right-of-way (the "Leased Premises") for the construction, maintenance and operation of the Gallery connecting the Buildings. The Leased Premises and Abutting Properties are described on attached Exhibits A and B, respectively, and the site plan and elevations for the Gallery are depicted on attached Exhibit C.
2. The Lease shall be for a term of ninety-nine (99) years. The Lease shall commence as of January 1, 2011 (the "Effective Date") and expire on December 31, 2109. 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. The Lease shall automatically renew for a subsequent ninety-nine (99) year period, unless either the City or the UW gives the other notice of its intent not to renew three hundred sixty-five (365) days before the expiration of the Lease.
4. No rent shall be payable by the UW under the Lease.
5. No further construction, modification, improvement, alteration, or remodeling of the Gallery shall be undertaken without prior written approval of the City's Office of Real Estate Services, and any plans for any of the same are subject to written approval of the City's Office of Real Estate Services. Title to all improvements installed or erected by the UW on the Leased Premises shall be in and remain the

property of the UW for and during the entire term, subsequent terms or proper assignment of the Lease.

6. The UW shall, at its own expense, keep and maintain the Gallery 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. The UW shall be responsible for the cost of and contracting for all repairs and replacements of the Gallery during the term of the Lease. The UW 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 Gallery or improvements in the Leased Premises, and the City shall have no responsibility or liability for any damage to the Gallery, improvements, facilities or contents, in any manner.
8. The UW shall be solely responsible for and promptly pay all charges for heat, electricity, and any other utility used upon or furnished to the Gallery and the Leased Premises. The obligation of the UW to pay for such utilities shall commence as of the date on which possession of the Leased Premises was taken by the UW without regard to the formal Effective Date of the Lease.
9. If the Gallery is completely destroyed by an act of nature, such as storm or fire; by an act of public enemies; or by reason of riot or insurrection, the Lease shall terminate on the date that is thirty (30) days after the date of such destruction, unless during such thirty (30) day period the UW gives the City written notice of its election to rebuild the Gallery within one (1) year of the date of such destruction, in which case the Lease shall remain in full force and effect.
10. The City shall carry liability insurance through a self-insured retention program with Wisconsin Municipal Mutual Insurance Company. The UW, an agency of the State of Wisconsin, shall provide liability coverage for its officers, agents, and employees consistent with Section 895.46(1) and 893.82 of the Wisconsin Statutes. Although the liability coverage provided by the State of Wisconsin under Wis. Stats. sec. 895.46(1) is self-funded, and continuous, it is subject to the damage cap in Wis. Stats. sec. 893.82(6). Such liability coverage includes, but is not limited to claims, demands, losses, costs, damages and expenses of every kind and description (including death), or damage to persons or property arising out the Lease and founded upon or growing out of the acts or omissions of any of the employees of the UW while acting within the scope of their employment where protection is afforded by Sections 893.82 and 895.46(1) of the Wisconsin Statutes.
11. The City shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of the City, its agents or employees acting within the scope of their employment, in accordance with and while retaining the protections provided in Wis. Stats. ss. 893.80 and 895.46(1). The UW, an agency of the State of Wisconsin, shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of its agents, officials or employees acting within the scope of their employment, in accordance with Wis. Stats. ss. 893.82 and 895.46(1). The obligations of the parties under this Paragraph shall survive the expiration or termination of the Lease.
12. The UW shall represent and warrant that it will not use, 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.
13. The UW shall not sublet the Leased Premises, or any portion thereof, to any for-profit entity.
14. During the term of the Lease the parties agree to abide by their respective policies of non-discrimination and affirmative action. Further, the parties agree that the Lease will not subject either

party to the other's jurisdiction for the determination of such matters.

15. The Gallery shall conform where applicable to COMM 61.05 of the Wisconsin Administrative Code, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by the UW.
16. Nothing in the Lease shall be construed to waive the UW's sovereign immunity as an arm of the State.
17. Any interest the UW has in real property pursuant to the Lease shall not be subject to the City's power of eminent domain pursuant to Wis. Stat. § 66.0915(3) or any other law.