



Legislation Details (With Text)

**File #:** 43655      **Version:** 1      **Name:** 10827 Air Space Lease - UW Music Performance Building  
**Type:** Resolution      **Status:** Passed  
**File created:** 7/7/2016      **In control:** BOARD OF PUBLIC WORKS  
**On agenda:** 9/6/2016      **Final action:** 9/6/2016  
**Enactment date:** 9/9/2016      **Enactment #:** RES-16-00620

**Title:** Authorizing the Mayor and City Clerk to execute an air space lease with the Board of Regents of the University of Wisconsin System to accommodate the encroachment of an overhanging building canopy into the North Lake Street public right-of-way.

**Sponsors:** Zach Wood

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Leased Premises legal desc.pdf, 2. Exhibit B - Abutting Property legal desc.pdf, 3. Exhibit C - Site Plan and Elevation binder.pdf

Date	Ver.	Action By	Action	Result
9/6/2016	1	COMMON COUNCIL	Adopt	Pass
8/17/2016	1	BOARD OF PUBLIC WORKS	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	
7/25/2016	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
7/20/2016	1	BOARD OF PUBLIC WORKS	Referred	
7/19/2016	1	COMMON COUNCIL	Refer	Pass
7/7/2016	1	Economic Development Division	Referred for Introduction	

**Fiscal Note**

No fiscal or budgetary impact.

**Title**

Authorizing the Mayor and City Clerk to execute an air space lease with the Board of Regents of the University of Wisconsin System to accommodate the encroachment of an overhanging building canopy into the North Lake Street public right-of-way.

**Body**

WHEREAS, the Board of Regents of the University of Wisconsin System (“UW”) is the owner of certain real property located at 740 University Avenue ( the “Abutting Property”); and

WHEREAS, the Abutting Property will be improved with a building commonly known as the Music Performance Building (the “Building”); and

WHEREAS, the design of the Building includes a canopy (the “Encroaching Building Canopy”), which will overhang the North Lake Street public right-of-way; and

WHEREAS, the City and the UW desire to enter into a lease for the air space over the North Lake Street public right of way to be occupied by the Encroaching Building Canopy; 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 North Lake Street public right-of-way (the "Leased Premises") for the construction, maintenance and operation of the Encroaching Building Canopy. The Leased Premises and Abutting Property are described on attached Exhibits A and B, respectively, and the site plan and elevations for the Building are depicted on attached Exhibit C.

2. The Lease shall be for a term of ninety-eight (98) years. The Lease shall commence as of December 1, 2016 (the "Effective Date") and expire on November 30, 2114. 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-eight (98) 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 or alteration of the Encroaching Building Canopy 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 Encroaching Building Canopy 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 Encroaching Building Canopy during the term of the Lease. The UW shall be responsible for replacing the Encroaching Building Canopy with material of the same size, style, and quality of that being replaced.

7. The City shall have no responsibility or liability for any maintenance of or damage to the Encroaching Building Canopy.

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 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 Encroaching Building Canopy 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 Encroaching Building Canopy within one (1) year of the date of such destruction, in which case the Lease shall remain in full force and effect.

10. During the term of the Lease, the UW agrees to hold harmless the City of Madison and its employees, agents, officers, and officials from any and all liability including claims, demands, losses, costs, damages, and expenses of every kind and description (including death), or damages to persons or property, based on the acts or omissions of UW, its officers, officials, employees, or agents while acting within the scope of their employment or agency, consistent with sections 895.46(1) and 893.82 of the Wisconsin Statutes. It is not the intent of either party to waive the provisions of Wis. Stats. sec. 893.80 or 893.82 or any other applicable

immunity, protections, or limitations of liability applicable to either party which may be provided by law.

11. The UW, an agency of the State of Wisconsin, provides liability coverage for its officers, agents, officials and employees consistent with Section 895.46(1) and 893.82 of the Wisconsin Statutes. The UW's employees who participate in the activities resulting from the Lease are employees of the State of Wisconsin. Although the liability coverage provided by the State of Wisconsin under Wis. Stats. sec. 895.46(1) is self-funded, unlimited, 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 of the Lease and founded upon or growing out of the acts or omissions of any of the employees of 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. The UW shall provide a copy of its standard coverage letter to the City upon request.

12. The UW shall not sublet the Leased Premises, or any portion thereof.

13. The UW's interest in the Lease shall be considered appurtenant to its ownership of the Abutting Property, and the UW's interest in the Lease shall not be severed from its ownership of the Abutting Property. The UW may at any time, upon notice to the City, sell, assign, transfer, mortgage, pledge, encumber, grant and convey its interest in the Lease and the improvements located within the Leased Premises (which actions are collectively referred to as "Transfers"), but only if such Transfer is made to another governmental authority or state educational institution and is made simultaneously with the Transfer of its interest in the Abutting Property to such governmental authority. 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 UW's right, title and interest in and to the Lease shall be considered as having assumed and become bound by all of the UW's obligations thereunder and shall take the Lease subject to all prior breaches and shall be liable therefor in the same manner as the UW or prior purchaser or transferee. An assignment of the Lease to a non-governmental authority other than a state educational institution is strictly prohibited. A transfer of the Abutting Property to a non-governmental authority will result in termination of the Lease.