



Legislation Details (With Text)

File #: 52986 **Version:** 1 **Name:** 3762 Air Space Lease - Meriter S. Brooks & Milton St.
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File created: 8/27/2018 **In control:** BOARD OF PUBLIC WORKS
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Title: Authorizing the Mayor and City Clerk to execute an air space lease with Meriter Hospital Inc. to accommodate a skywalk connecting the two properties located at 202 South Park Street and 36 South Brooks Street. (13th A.D.)

Sponsors: Allen A. Arntsen

Indexes:

Code sections:

Attachments: , , ,

Date	Ver.	Action By	Action	Result
9/25/2018	1	COMMON COUNCIL	Adopt	Pass
9/24/2018	1	FINANCE COMMITTEE	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
9/17/2018	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
9/5/2018	1	BOARD OF PUBLIC WORKS	Return to Lead with the Recommendation for Approval	Pass
9/4/2018	1	FINANCE COMMITTEE	Referred	
9/4/2018	1	FINANCE COMMITTEE	Referred	
9/4/2018	1	COMMON COUNCIL	Refer	Pass
8/27/2018	1	Economic Development Division	Referred for Introduction	

Fiscal Note

The proposed resolution authorizes an air space lease between the City of Madison and Meriter Hospital, Inc. to accommodate a skywalk. The terms of the air space lease have been negotiated between the City’s Office of Real Estate Services and Meriter and the lease of the necessary air space over public right of way is in accordance with Wisconsin Statutes Section 66.0915(4). Annual rent payable during the first five lease years shall be in the amount of \$1,000 and shall be deposited as General Fund revenue. Rent shall be subject to a 10 percent increase every five years beginning on the fifth anniversary of the air space lease.

Title

Authorizing the Mayor and City Clerk to execute an air space lease with Meriter Hospital Inc. to accommodate a skywalk connecting the two properties located at 202 South Park Street and 36 South Brooks Street. (13th A.D.)

Body

WHEREAS, Meriter Hospital Inc. (“Meriter”) is the owner of property located at 202 South Park Street and 36 South Brooks Street (collectively, the “Abutting Properties”); and

WHEREAS, the Abutting Properties are improved with two buildings (the “Buildings”) that are part of the Meriter Hospital campus; and

WHEREAS, as a condition of approval for Meriter's emergency generator facility project at 36 South Brooks Street, the City requires a new lease for the existing skywalk connecting the buildings located on the Abutting Properties; and

WHEREAS, the terms of an air space lease have been negotiated between the Office of Real Estate Services and Meriter; 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, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute an air space lease ("Lease") with Meriter Hospital Inc. (the "Lessee") on the following terms and conditions:

1. The City shall lease to the Lessee approximately 1,872 sq. ft. of air space over the South Brooks Street and Milton Street public rights-of-way (the "Leased Premises") for the construction, maintenance and operation of the existing skywalk (the "Skywalk") connecting the Lessee's buildings located at 202 South Park Street and 36 South Brooks Street (collectively, the "Abutting Properties").
2. The Abutting Properties and the Leased Premises are described on attached Exhibit A and Exhibit B, respectively, and the site plan depicting the Skywalk is attached as Exhibit C.
3. The Skywalk shall be used exclusively by the employees, agents, permittees and invitees of the Lessee.
4. The Lease shall be for a term of ninety-eight (98) years, commencing as of January 1, 2018 (the "Effective Date") and expiring on December 31, 2116. 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.
5. During the first five Lease years, the Lessee shall pay to the City annual rent of \$1,000. Rent shall be subject to a 10% increase every five years beginning on the fifth anniversary of the Lease.
6. Any construction, modification, improvement, alteration, or remodeling of the Skywalk shall be subject to the prior written approval of the City and shall permit the City to review any plans for the same. Title to all improvements installed or erected by the Lessee within the Leased Premises shall be in and remain the property of the Lessee for and during the entire term, subsequent terms or proper assignment of the Lease.
7. The Lessee may sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey its interest in the Lease and the Skywalk (which actions are collectively referred to herein as "Transfers"), but only if such Transfer is made simultaneously with the Transfer of the Abutting Properties to the same purchaser or transferee of the Lease and the Skywalk. The Lessee shall not sublet the Leased Premises, or any portion thereof.
8. The Lessee 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 Lessee or its officers, officials, members, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of the Lease, whether caused by or contributed to by the negligence

of the City, its officers, officials, agents, or employees. The terms of this paragraph shall survive termination of the Lease.

9. The Lessee shall carry commercial general liability insurance covering as insured the Lessee and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$5,000,000 per occurrence. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of the Lease. As evidence of this coverage, the Lessee shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, the Lessee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while the Lease is in effect, the Lessee shall provide a renewal certificate to the City for approval.
10. The Lessee 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 Lessee 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.
11. Within one year after the effective date of the expiration or termination of the Lease, the Lessee shall cause the Skywalk to be demolished and removed.
12. The Skywalk shall conform where applicable to chapter SPS 362 of the Wisconsin Administrative Code, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by the Lessee.
13. The City and the Lessee shall enter into an Encroachment Agreement for the surface encroachment into the South Brooks Street and Milton Street public rights of way of the Skywalk footings, foundation, and concrete pier.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution.