



## Legislation Text

File #: 48041, Version: 1

### Fiscal Note

The proposed resolution authorizes the sale of City owned parcels within the Center for Industry and Commerce. The total purchase price is \$2,666,433. Proceeds for the sale will be used to pay out outstanding assessments for the parcels being sold, the total outstanding is \$630,205. The balance of the sale proceeds will be deposited in the General Land Acquisition fund.

### Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and John Schlueter (and/or assigns) for the purchase of certain City-owned Lots in The Center for Industry & Commerce.

### Body

The Common Council adopted a resolution (RES-13-00460) on June 18, 2013 which authorized the execution of an "Agreement to Terminate the 'Agreement to Purchase and Undertake Development of the Northeast Industrial Property'" ("Purchase and Development Agreement") which was executed between the City of Madison ("City") and The Center for Industry & Commerce, LLC ("LLC") for the development of a mixed-use industrial park. Under the terms of the Purchase and Development Agreement, the LLC deeded back to the City, at no cost, 14 lots it had previously purchased from the City in exchange for the mutual termination of the Purchase and Development Agreement and being relieved of any remaining obligations, including the obligation to purchase an additional 78 lots from the City. Due to the termination of the Purchase and Sale Agreement the City owns lots within The Center for Industry & Commerce ("The CIC"). These lots are being marketed by the City. The adoption of this resolution will authorize the sale of: Part of Lot 71, Lots 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, vacated R.O.W. east of Lots 72, 73, 74, 75, 76, 77, 78, 79, and 80, portions of Lots 43, 44, 45, 46, and 47 that are located west of the "to be built" Ronald Reagan Avenue owned by the City in The CIC.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement ("Agreement") between the City and John Schlueter ("Buyer") for the purchase of: Part of Lot 71, Lots 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, vacated R.O.W. east of Lots 72, 73, 74, 75, 76, 77, 78, 79, and 80, and portions of Lots 43, 44, 45, 46, and 47 that are located west of the "to be built" Ronald Reagan Avenue, totaling 973,151 square feet, in The Center for Industry and Commerce, which is owned by the City and located , Madison, Wisconsin (collectively, "Property"), legally described in Exhibit A below, on substantially the following terms and conditions:

1. Buyer. John Schlueter ("Buyer") or its assigns to a related entity that is controlled by Buyer with the written approval of City.
2. Seller. City of Madison ("City").
3. Property. The Buyer will acquire, and the Seller will convey by Quit Claim deed, ownership of the Property, including all improvements located thereon and all appurtenances thereto.
4. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by City or Buyer, as indicated on the signature page of the Agreement.
5. Purchase Price. The purchase price for City's interest in the Property ("Purchase Price") shall be Two and 74/100 Dollars (\$2.74) per square foot of land, totaling approximately Two Million Six Hundred

Sixty Six Thousand Four Hundred Thirty Three and 00/100 Dollars (\$2,666,433.00). The actual Purchase Price to be calculated upon confirmation of final lot lines per the certified survey map for the Property.

City shall be responsible for any existing special assessments (as of the date of the executed Letter of Intent by both parties), payments along with any accrued interest at Closing.

6. Due Diligence Period. Buyer shall have one hundred and fifty (150) days after receiving a fully executed Offer to Purchase (“Due Diligence Period”) to evaluate the Property and conduct its due diligence review regarding the Property, its conditions, and all matters affecting the feasibility of the Property for Buyer’s intended purposes, including, but not limited to, the contingencies listed below (which may be more particularly described in said Offer to Purchase). Buyer may terminate the Offer to Purchase during the Due Diligence Period due to the following contingencies:
- a) CSM approval;
  - b) Zoning and permit review;
  - c) Document review contingencies (title, survey, etc);
  - d) Environmental evaluation;
  - e) Geotechnical evaluation;
  - f) Verification of utilities availability.

If Buyer is not satisfied with the results of its investigations tied to the above referenced contingencies during the Due Diligence Period for any reason deemed appropriate by Buyer in its sole discretion, Buyer will have the right to terminate the Offer to Purchase in writing, and all earnest money shall be returned to Buyer promptly after termination (if the written notice was received before the end of the 150<sup>th</sup> day of the Due Diligence Period). The Offer to Purchase shall include this due diligence contingency.

The Buyer shall have until August 1, 2017 to sign a lease with Henkels & McCoy, Inc for space in one of the buildings on the Property.

7. Survey. The Buyer will be responsible to complete a certified survey map (“CSM”) of the Property at its own cost along with all required application materials for submittal to the City of Madison Planning Commission to combine the existing lots into one developable lot. The CSM of the Property must be prepared by a professional land surveyor who is licensed in Wisconsin and will comply with the provisions of Chapter 236 of the statutes of the state of Wisconsin and Chapter 37 of the City of Madison general ordinance in surveying, dividing and mapping.
8. Earnest Money. Buyer shall deliver \$100,000 (“Earnest Money”) to First American Title Insurance Company (“Title Company”) within five (5) days after execution by both parties of the Offer to Purchase. City shall notify Buyer in writing of this date, which shall become the Effective Date in the Offer to Purchase, and send Buyer a copy of the fully executed Offer to Purchase. This deposit will be held as earnest money with respect to the purchase of the Property.
9. Title Insurance. City shall provide to Buyer, at City’s expense, within thirty (30) days after the Effective Date a commitment from Title Company to issue an ALTA Owner’s Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents. The commitment shall show the title condition of the Property as of a date no more than thirty (30) days before such title proof is provided to Buyer. The title commitment shall be subject only to liens which will be paid out of the proceeds of the Closing and to any exceptions acceptable to Buyer (“Permitted Exceptions”). Buyer shall notify City of any valid objection to title, in writing, no later than forty five (45) of receipt of the title commitment from City. City shall have a reasonable time, but not exceeding twenty (20) days, to

remove the Buyer's objections and Closing shall be extended as necessary for this purpose. Should City be unable or unwilling to carry out the Offer to Purchase by reason of a valid legal defect in title which Buyer is unwilling to waive, the Offer to Purchase shall be void and the Buyer shall be entitled to a return of the Earnest Money.

10. Closing Date. Closing shall occur within ten (10) days after the satisfaction or waiver of Buyer's contingencies. Closing will involve a tri-party escrow agreement (the "Escrow Agreement") between the title company, Buyer and the City which will outline; necessary documents to be submitted a day before closing to the title company, payment of special assessments and other closing costs from the wired Purchase Price, and the order of recording documents.
11. Closing Costs. There are no general real estate taxes on the Property; Buyer is responsible for all taxes assessed as a result of the acquisition of the Property subsequent to Closing. Buyer will be responsible to pay all costs of providing a loan title insurance policy to Buyer's lender, if applicable. City will pay the Wisconsin real estate transfer tax and the recording fees to remove any existing encumbrances. Buyer will pay the recording fees to record the deed and any loan documents for Buyer's lender and any closing costs. The special assessments existing as of the date of the executed letter of intent will be paid from the Purchase Price at Closing per the terms of the Escrow Agreement.
12. Fees. Buyer will be responsible for any development or connection fees, including, but not limited to, impact fees, Madison Metropolitan Sewerage District ("MMSD") connection fees and interceptor fees, Hanson Road Neighborhood Sanitary Sewer and Water Main connection fees, and CARPC fees, etc. The MMSD connection fees are due at Closing.
13. Real Estate Commission. City acknowledges that Todd Waller of Lee & Associates of Madison, LLC ("Broker") represents Buyer in this transaction as a broker, and City shall be solely responsible for payment of a three percent (3%) commission of the Purchase Price ("Broker Fee") due to Broker as a result of the Offer to Purchase if the Buyer purchases the Property. City will pay at Closing the Broker Fee to Broker.

Buyer and City each hereby represent and warrant to the other that they have not dealt with any other real estate broker, agent or salesman, in a manner that could create any legal right or claim in any broker, agent or salesman for a real estate commission or similar fee or compensation with respect to the negotiation and/or consummation or closing of this transaction or conveyance of the Property by City to the Buyer.

14. Insurance. Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors performing work on the Property shall carry commercial general liability insurance covering as insured Buyer and naming City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the City's Risk Manager. These policies shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of Offer to Purchase. As evidence of this coverage, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall furnish City with a certificate of insurance on a form approved by City, and, if requested by the City Risk Manager, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall also provide copies of additional insured endorsements or policy to City prior to the performance of any work on the Property. If the coverage required above expires while the Offer to Purchase is in effect, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to City for approval.
15. Limited Representations and Warranties-AS-IS Condition. Buyer shall purchase the Property in "AS-

IS, WHERE-IS” condition and “with all faults,” and shall agree that it relied upon no warranties, representations or statements by City, its agents or employees, or in closing the transaction.

16. Indemnification. Buyer shall be liable to and hereby agrees 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 Buyer or its officers, officials, members, agents, employees, invitees, or subcontractors. Negligence on the part of the City, its officers, officials, agents and employees does not relieve the Buyer of its obligations under this paragraph.
17. Construction Contingency. Buyer shall agree to commence construction on the Property within eighteen (18) months of the Effective Date (“Construction Deadline”). In the event Buyer fails to commence construction in that timeframe, City shall have the right, but not the obligation, to purchase the Property back from Buyer at the Purchase Price plus any reasonable out-of-pocket costs and expenses incurred by Buyer with respect to site planning and due diligence associated with the purchase described in the Offer to Purchase, but less any closing, title and transfer costs incurred by the City associated with the sale described in the Offer to Purchase or the repurchase as described in this paragraph (“Repurchase Option”). Buyer shall provide City with invoices of the aforementioned out-of-pocket costs. The City shall provide written notice to Buyer of its election to exercise the Repurchase Option of the Property.

BE IT FURTHER RESOLVED that the proceeds from the sale of the Property shall be credited against the: outstanding special assessments of the Property; title costs; sewer/water costs; and brokerage fee related to sale. Any remaining proceeds shall be used to pay down the remaining balance of special assessments on other City lots in the Center for Industry and Commerce. After paying these assessments, the remainder of the proceeds shall be distributed to the General Land Acquisition Fund (account no. 14006010-54860-00000).