



Legislation Text

File #: 45292, Version: 1

Fiscal Note

The proposed resolution has no fiscal impact.

Title

Amending Resolution Enactment No RES-16-00714, which authorizes the execution of a Purchase and Sale Agreement between the City of Madison and St. John Properties Acquisitions, LLC for the purchase of a portion of City-owned land within in The Center for Industry & Commerce to add additional property to the sale and reflect other negotiated changes.

Body

WHEREAS, on September 20, 2016 the Common Council approved the execution of a Purchase and Sale Agreement (“Agreement”) with St. John Properties Acquisitions, LLC (“Buyer”) to acquire the City owned property described therein (“Property”) via Resolution Enactment No. RES-16-00714, File No. 44296 (the “Resolution”); and

WHEREAS, during the negotiation of the Agreement a number of changes occurred to provisions in the Resolution that were agreed to by City staff and Buyer that are identified and are subject to approval of the Common Council in this amendment (“Amendment”); and

WHEREAS, the legal description of the Property in the Resolution did not include a portion of Lot 71 on the southern boundary which ended at Lot 70; and

WHEREAS, City staff advised the Buyer to square off its southern boundary by including a portion of Lot 71; and

WHEREAS, this Amendment will revise the description of the Property to include a portion of Lot 71 which will be described in the certified survey map (“CSM”) described in Paragraph 12 below.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the amendment of Resolution Enactment No RES-16-00714 with the following changes:

1. The definition of Phase I is hereby amended to include a portion of Lot 71.
2. The following subparagraphs of Paragraph 7 “Due Diligence Period”, are hereby amended to state as follows:
 - Subparagraph (a) is revised to state: (a) ~~Replat approvals~~ CSM approvals;
 - Subparagraph (d) is revised to state: (d) ~~Bike/pedestrian~~ path contingency;
 - Subparagraph (i) is revised to state: (i) Negotiation of mutually acceptable ~~Development Agreement~~ Construction Deadlines.
3. Paragraph 12, “Replat and Relocation of Merchant Street”, is hereby replaced with the following:

Relocation of Merchant Street and CSM. During the Due Diligence Period, Buyer shall obtain,

at Buyer's cost, all approvals necessary to record a replat Certified Survey Map ("CSM") evidencing the relocation of Merchant Street to abut the eastern edge of Phase I and forming the Property into one or more four or fewer lots (Phase I will be one lot and if Buyer acquires Phase II, it will be another lot) as desired by Buyer as set forth herein. Phase I will be the first lot and Phase II will be the second lot, both substantially as described in Exhibit A with the specific property boundaries to be proposed by Buyer. The CSM shall also include two (2) lots in addition to the Phase I and Phase II lots. The additional lots shall lie on each side of the future realigned Merchant Street, combining any lot remnants not included in Phase I or Phase II with existing adjacent lots as desired by City. If desired by City, the replat will also adjust the lot lines between the lots adjacent to the Property on the south (i.e., Lots 46-47 and Lots 38-39). Buyer acknowledges the replat CSM will be conditioned on closing the sale of Phase I. City agrees to assist Buyer, at no cost to City, in accomplishing the relocation/vacation of Merchant Street in the design of the realignment of Merchant Street and the final configuration of the proposed CSM. City, through the replat, will designate roughly a 20' wide outlet for the use of a future bike path on the western edge of Phase I as further described below on the CSM the easement area along the western and northern boundaries of Phase I within which City reserves the right to construct a future pedestrian / bike path as referenced in Paragraph 13 below. City and Buyer agree that such pedestrian/bike path easement area shall be within the existing 30' landscape buffer strip identified on the plat.

4. Paragraph 13, "Bike Path" is hereby amended as follows:

Bike/Pedestrian Path. Buyer and City acknowledge that the State of Wisconsin owns Outlot 3 adjacent to the western boundary of Lots 64 through 701, and the State City has stated it may have a desire desires to install a bike or pedestrian path that may extend into some portions of the western edge of Lots 64 through 701, but the City does not anticipate a need for the bike or pedestrian path in advance of Closing, and will not require Buyer to construct a bike or pedestrian path in connection with its development of the Property. The Agreement will provide that City reserves the right to install a bike or pedestrian path within the existing 30' landscape buffer strip shown on the plat along the western and northern boundaries of Phase I, provided such path is installed and maintained at the City's cost. This language is consistent with the way existing pedestrian / bike paths in the Center for Industry and Commerce are currently managed. Such provision will survive closing. During the Due Diligence Period, City will seek approvals from the Association and the Common Council to amend provisions VI.F on page 16 and VI.P1 on page 24 of the Center for Industry and Commerce Declaration of Covenants, Conditions and Restrictions that was recorded on March 25, 2003 and provision VI.P1 on Page 3 of The Amendment to The Center for Industry and Commerce Declaration of Covenants, Conditions and Restrictions dated February 18, 2005 that was recorded on February 23, 2005 (such Declaration and Amendment collectively, the "CCR") to state (consistent with current practice) that City, rather than individual Owners, will construct and maintain any bike and pedestrian paths in the Center for Industry and Commerce ("CCR Path Amendments"). The CCR Path Amendments will be recorded at or prior to closing on the sale of Phase I. During the Due Diligence Period, Buyer shall have a bike/pedestrian path contingency allowing Buyer to evaluate the impact of the proposed bike path on Buyer's intended development of Phase I, including exploring the feasibility of accommodating the bike path by adjusting the western Phase I lot line. terminate the Agreement if any of the following conditions are not met: (1) the amended language in Paragraph 12 is not approved within the CSM; or (2) the City does not obtain the necessary approvals for the CCR Path Amendments.

5. The first and second paragraphs of Paragraph 14, "Infrastructure" are hereby amended as follows:

City shall be responsible for completing the construction of the following roads, as well as water and sewer within the right-of-way for each of the following roads: 1) Ronald Reagan Avenue (north-south connector from Hoepker Road to John Wall Drive); 2) John Wall Drive (east from Ronald Reagan Avenue to intersect with Manufacturers Drive); and 3) relocated extension of Merchant Street so it connects with Ronald Reagan Avenue/John Wall Drive; and 4) Graaskamp Way from Hoepker Road to John Wall Drive. Buyer acknowledges that said construction costs will be specially assessed against all neighboring landowners, including the Property.

With respect to each building, City shall guarantee completion of construction of the applicable adjacent roads and utilities ~~per a mutually agreed upon date based on the Construction Deadlines.~~ The specifics of the infrastructure construction, and Construction Deadlines, will be set forth in the Agreement. ~~and Development Agreement.~~

6. The first two paragraphs of Paragraph 15, "Special Assessments" are hereby amended as follows:

City agrees to pay at Closing on the sale of Phase I all special assessments (including accrued interest thereon through Closing) that were outstanding against any lots comprising Phase I as of the date of execution of the Letter of Intent on August 29, 2016 ("LOI"). If Buyer closes on the purchase of Phase I, Buyer shall be responsible ~~for to pay when due~~ any special assessments levied against Phase I after ~~execution of this LOI August 29, 2016~~ (including any interest that may accrue thereon).

If Buyer closes on Phase II during the Option Period, then City will pay at Closing on the sale of Phase II a designated portion (set forth below) of all special assessments (including accrued interest thereon through Closing) that were outstanding against any lots comprising Phase II as of the date of execution of the LOI ("Phase II Outstanding Special Assessments"). If Buyer closes on the purchase of Phase II, Buyer shall be responsible to pay ~~for when due~~ any special assessments levied against Phase II after ~~execution of this LOI August 29, 2016~~ (including any interest that may accrue thereon).

BE IT FURTHER RESOLVED that all other terms and conditions of Enactment No. RES-16-00714 shall remain the same; and

BE IT FURTHER RESOLVED that First American Title Company can rely on this amendment to RES-16-00714 at Closing.

BE IT FINALLY RESOLVED that the Mayor and City Clerk are 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 all in a form to be approved by the City Attorney.