

City of Madison, Wisconsin

A SUBSTITUTE RESOLUTION \_\_\_\_\_

Accepting Offers to Sell from Gregory A. Rice and John R. Brigham and Rice Associates and Brigham Woods Corporation and Barbara J. Hoel (collectively the "Sellers") for approximately 58.34 59 acres of land (the "Property") and authorizing the execution of an Agreement to Purchase and Undertake Development between the City of Madison and the Sellers for the development of the Property as an industrial park and amending the 2004 Capital Budget to authorize this land acquisition.

Presented September 7, 2004  
Referred Board of Estimates, Board of  
Public Works, Plan Commission,  
and Common Council meeting of  
September 21, 2004

Rereferred \_\_\_\_\_

Reported Back SEP 21 2004

Adopted  \_\_\_\_\_ POF \_\_\_\_\_

Rules Suspended \_\_\_\_\_ Tabled \_\_\_\_\_

Public Hearing \_\_\_\_\_

Drafted By: Donald S. Marx  
Real Estate Manager

Date: September 1, 2004

Fiscal Note: See fiscal note below.

Sponsors: Mayor David J. Cieslewicz  
Ald. Brenda Konkel, District 2  
Ald. Ken Golden, District 10  
Ald. Jean MacCubbin, District 11  
Ald. Santiago Rosas, District 17  
Ald. Paul Van Rooy, District 18

APPROVAL OF FISCAL NOTE IS NEEDED  
BY THE COMPTROLLER'S OFFICE  
Approved By 

SUBSTITUTE RESOLUTION NUMBER 61854  
ID NUMBER 36716

PREAMBLE

On August 1, 2000 the Common Council adopted the Hanson Road Neighborhood Development Plan that identified lands north of Hoepker Road suitable for light-industrial uses. The City has received two Offers to Sell (the "Offers") approximately 59 acres north of Hoepker Road (the "Property") for future development as an industrial park. Under the terms of the Offers the City would acquire the Property after the Sellers annex the Property and some adjacent lands to the City and record a Certified Survey Map to create legal lots to convey the Property to the City. In addition the City and the Sellers would enter into an Agreement to Purchase and Undertake Development that would result in the City holding the Property and selling the Property to the Sellers in phases at a base price to be annually escalated at a percentage according to a purchase price schedule. The Agreement would require the Sellers to plat the Property for an industrial park and amend the zoning map to create a restricted M-1 zoning district. The Agreement would require the City to construct public improvements, including roads, water and

sanitary, to each phase and that the costs of said public improvements would be specially-assessed against the Property and collected by the City when individual lots are sold or developed.

NOW, THEREFORE BE IT RESOLVED that the City of Madison hereby accepts an Offer to Sell from Gregory A. Rice and John R. Brigham and Rice Associates and an Offer to Sell from Brigham Woods Corporation and Barbara J. Hoel, or their successors, heirs and assigns (collectively the "Sellers") for approximately 59 acres north of Hoepker Road, as shown on Exhibit A, for the future development of an industrial park on the following terms and conditions:

1. Purchase Price. The total purchase price of the Sellers' interest in the Property shall be \$2,309,024 (59 acres x \$39,136/acre), payable in cash at closing.
2. Title Insurance. The Sellers shall provide to the Buyer at the Sellers' expense at least ten (10) business days prior to closing a commitment from a title insurance company licensed in Wisconsin to issue title insurance in the amount of the total purchase price upon the recording of proper documents.
3. Buyer's Inspections. Prior to the date of closing, the Buyer and its agents shall be given the opportunity to conduct such inspections of the Property as the Buyer deems reasonably necessary related to matters such as, but not limited to, the physical condition of the improvements located upon the Property, soil conditions, location of flood plain/wetlands boundaries, environmental conditions (adverse or otherwise), matters which would be revealed by survey, zoning, building or land use restrictions and other laws, ordinances, rules or regulations affecting the Property or the Buyer's intended use thereof. If such inspections determine that there are adverse environmental conditions of the Property, or that underground storage tanks exist on any portion of the Property, the Sellers shall prior to closing comply with all federal, State, and local statutes, ordinances or regulations regarding the adverse environmental conditions or storage tanks, including, but not limited to State tank registration and abandoned tank disclosure requirements. If there is an abandoned underground storage tank on the Property, the Sellers shall remove, if practicable, or properly clean and close in conformance with applicable State standards. Any contamination remediation will be the sole responsibility of the Sellers.
4. Conditions of Sale.
  - a. Within fourteen (14) days of acceptance of the Offers by the Buyer, the Sellers shall:
    - (1) File a petition to annex the Property and the adjacent lands depicted in Exhibit B into the City of Madison.
    - (2) Submit a Certified Survey Map (CSM) application for the Property and the adjacent lands that will divide the Property and the adjacent lands into the lots depicted in Exhibit C.
    - (3) Submit a preliminary and final plat for an industrial park for City approval that will include the Property and the adjacent lands.
    - (4) Submit a zoning map amendment for a restricted M-1 zoning district for City approval that will include the Property and the adjacent lands simultaneously with the

submission of the preliminary and final plat that will include the Property and the adjacent lands.

(5) Deliver to the Buyer a list of all federal, State, county or local conservation, farmland, environmental, or other land use programs, agreements, or conservation easements, to which any part of the Property is subject, or in which any part of the Property is enrolled. (Farmland Preservation Agreements, Forest Crop, Woodland Tax, Managed Forest Conservation Reserve, Wetland Mitigation or comparable programs). The Sellers shall also disclose to the Buyer at that same time what restrictions on land use are imposed under said programs or agreements applying to the Property, and whether there are any penalties, special fees, withdrawal charges, or payback obligations pending, or currently deferred, and the amounts, if any. This contingency shall be deemed satisfied unless the Buyer delivers to the Sellers, within five (5) days of receipt of said list and disclosures, a notice of termination of the Offers based upon the use-restrictions imposed or the amount of any penalty, or payback obligation pending or deferred.

b. Upon acceptance of the Offers by the Buyer, the Buyer and the Sellers shall execute an Agreement to Purchase and Undertake Development of the Burke Commerce Park between the City of Madison and Gregory A. Rice and John R. Brigham and Rice Associates and Brigham Woods Corporation and Barbara J. Hoel, or their successors, heirs or assigns.

5. Closing.

a. Closing shall take place within thirty (30) days of annexation of the Property and adjacent lands into the City of Madison and the recording of the CSM but no later than December 31, 2004, or at a later date agreed to by the parties, at the offices of the title company providing the title insurance.

b. The Sellers agree to execute and deliver to the Buyer at closing a Warranty Deed conveying the Property to the Buyer.

c. The Buyer shall pay all recording/filing fees except that the Sellers shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by this Offer.

d. The Sellers shall pay all real estate transfer taxes payable pursuant to Section 77.25, Wisconsin Statutes, if any.

6. Special Assessments. The Sellers shall be responsible for any and all special assessments, area assessments, connection charges, interceptor charges or any other charges payable to any municipality or utility with regard to the Property as of the date of closing.

7. Acceptance. The Offers may be accepted by the Buyer delivering or mailing via certified mail, return receipt requested, a fully-executed original of the Offers to the Buyer at the following address: P.O. Box 8685, Madison, WI 53708-8685, at any time within sixty (60) days of the date of the Seller's execution of the Offers, whereupon the Offers and the acceptance thereof shall become a binding contract. If the Buyer does not accept the Offers within the prescribed time period, the Offers shall become null and void and be of no further force or effect.

BE IT FURTHER RESOLVED THAT, upon acceptance of the Offers, the Mayor and City Clerk are authorized to execute an Agreement to Purchase and Undertake Development of the Burke Commerce Park between the City of Madison and Gregory A. Rice and John R. Brigham and Rice Associates and Brigham Woods Corporation and Barbara J. Hoel, or their successors, heirs and assigns (collectively the "Developers") for the co-development of the Property as an industrial park on the following terms and conditions:

- a) The Developers shall purchase approximately 59 gross acres of the Property and develop not less than 50.15 net acres (85% of the gross acreage) as an industrial park. The City and the Developers shall dedicate all land for roads on the approved final plat and/or certified survey map at the time the final plat and certified survey map is recorded. The City and the Developers shall subdivide by recorded final plat and/or certified survey map the entire 59 gross acres of the Property. The Developers shall pay cost of preparing the preliminary plat, final plat, and certified survey map. The City agrees to the general placement of the roads, detention ponds and the conceptual layout of the lots as depicted on the Draft Preliminary Plat attached hereto as Exhibit D, subject to the approval of the Plan Commission and Common Council of the City.
- b) The Developers shall acquire the Property in phases over ten (10) years commencing from the date that the Developers have the ability to obtain a building permit, based upon public street, sewer and water being available ("Start Date") for all of the first phase. The Developers shall acquire the first phase, located immediately north of Hoepker Road as shown on Exhibit D, using a base price of \$39,136 per gross acre, prorated in case of a partial acre. The base price per gross acre, on any portion of the Property, shall increase by eight per cent (8%) each year upon each anniversary of the Start Date. The Developers shall purchase all of the approximately 59 gross acres by the end of Year 10. After the first phase has been acquired, the location and timing of future phase purchases shall be determined by the Developers.
- c) The City shall construct public roads, storm sewer, water and sanitary sewer improvements to the individual lots within the Property, consistent with the Developers' phasing of the Property. In addition, at the Developers' option, the City shall allow the Developers and their contractors access to all portions of the Property prior to the Developers closing on the purchase of the same for the construction of temporary roads, storm water detention ponds, berms and swales by the Developers.
- d) In accordance with Madison's General Ordinance regarding special assessments, the Developers shall pay for all public improvements constructed by the City, through special assessments of the Property. The City shall defer said special assessment(s) as permitted in Madison General Ordinance 4.081 (2)(a) for a period not to exceed ten (10) years of the approval of a special assessment district for the public improvements (the "Deferral Period"). The City shall collect special assessments for a particular lot when the lot is sold to a third party buyer, to include the Developers or a wholly-owned subsidiary of the Developers if it purchases a lot as a third party

buyer, or when a building permit is issued, whichever occurs first. Special assessments shall not be collected when a phase of the Property is first conveyed to the Developers or an affiliate of the Developers. During the Deferral Period no installment payment of the special assessments shall be required on any lots prior to one of the aforementioned event's occurrence. The Developers at their sole discretion may pre-pay all or any portion of the special assessments. All outstanding special assessments shall be paid in full at the end of each Deferral Period.

- e) The City and the Developers shall work jointly towards rezoning the Property from Temporary Agriculture to a permanently restricted M-1 classification.
- f) Development within the Property shall conform to specific design covenants, as approved by the City's Plan Commission and Common Council, that shall ensure that the visual character and quality of the development are attractive and consistent with the City's commitment to maintain a high-quality environment for buyers in the Property and present an attractive northeast gateway to the City.
- g) If any state, local or federal governmental body or agency fails to provide any approval necessary to enable the Property to be final platted and rezoned in a manner acceptable to the Developers, or requires any adjustments to the Draft Preliminary Plat attached in Exhibit D, the Developers shall have the option to terminate this Agreement. If any state, local or federal governmental body or agency fails to provide any approval necessary to allow buildings and other improvements to be constructed on any portion of the Property that has not yet been conveyed to the Developers, the Developers shall have the option to terminate this Agreement with respect to that portion of the Property.
- h) The Developers shall be responsible for any taxes or penalties that may arise under Section 70.32(2r), Wisconsin Statutes as a result of the Developers' proposed change of use of the Property to nonagricultural uses.
- i) Prior to the Developers closing on all phases of the Property, the City shall make best efforts to ensure that the Developers are on record to receive all public notices as though the Developers were owner of the entire Property from the date this Agreement is signed.
- j) The City agrees to execute and deliver to the Developers at closing a Warranty Deed conveying the Property to the Developers free and clear from all liens and encumbrances, excepting the following: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, and general taxes levied in the year of closing and exceptions to title previously approved by the Developers provided none of the forgoing are inconsistent with the Developers' intended use of the Property as outlined herein.

BE IT FURTHER RESOLVED that the 2004 Capital Budget be amended to authorize the purchase of the Property and to fund miscellaneous acquisition costs for \$2,325,000 funded with available resources in the General Land Acquisition Fund.

BE IT STILL FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute, deliver accept and record any and all documents and take such actions as shall be necessary or desirable to accomplish the purpose of this resolution in a form approved by the City Attorney.

## FISCAL NOTE

This resolution would amend the 2004 Capital Budget to authorize the purchase of approximately 59 acres of land and fund miscellaneous acquisition costs for \$2,325,000 with closing anticipated prior to the end of the year. Funding for this acquisition would come from the General Land Acquisition Fund. Presently this fund has an available balance of \$1,979,000. An additional \$461,000 is anticipated from Dane County in final settlement of the purchase and resale of the Henrietta Fisher property earlier this year. When these funds are received from the County sufficient resources will be available in the General Land Acquisition Fund to finance this purchase.

As a result of this purchase and annexation the City will be responsible for future revenue sharing payments to the Town of Burke in the amount of approximately \$5,000 per year for the next five years.

In addition, this resolution commits the City to financing the construction of public improvements to serve the proposed industrial park. These required improvements can be financed using the Special Assessment Revolving Fund with no impact on the General Fund, tax levy or State Expenditure Restraint Program. However future year capital budget authorization will be required.