



## Legislation Details (With Text)

<b>File #:</b>	38517	<b>Version:</b>	2	<b>Name:</b>	SUBSTITUTE - Authorizing the execution of a First Amendment to the Purchase and Sale Agreement between City of Madison and Gorman & Co.
<b>Type:</b>	Resolution	<b>Status:</b>			Passed
<b>File created:</b>	5/18/2015	<b>In control:</b>			BOARD OF ESTIMATES (ended 4/2017)
<b>On agenda:</b>	6/16/2015	<b>Final action:</b>			6/16/2015
<b>Enactment date:</b>	6/19/2015	<b>Enactment #:</b>			RES-15-00524
<b>Title:</b>	SUBSTITUTE - Authorizing the execution of a Second Amendment to the Purchase and Sale Agreement executed between the City of Madison and Gorman & Company				
<b>Sponsors:</b>	Marsha A. Rummel				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. 38517-Original Resolution.pdf, 2. Exhibit A.pdf, 3. Exhibit B.pdf, 4. Exhibit C.pdf, 5. Exhibit D.pdf				

Date	Ver.	Action By	Action	Result
6/16/2015	2	COMMON COUNCIL	Adopt	Pass
6/8/2015	2	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
5/19/2015	1	COMMON COUNCIL	Refer	Pass
5/18/2015	1	Attorney's Office	Referred for Introduction	

### Fiscal Note

This amendment changes some aspects of the Purchase and Sale agreement that primarily affect project phasing, but the basic financial terms of the agreement are unchanged. The City's total costs for acquiring the Property are an estimated \$3,496,925 (including purchase price of \$3,300,000 -- \$6.64 per sq ft) and \$196,925 for prorated taxes and miscellaneous acquisition (appraisal, environmental assessment) and closing costs. The City holding costs on the Property are approximately \$131,443. The City is selling the Property for \$6,000,000 (\$12.07 per sq ft). The Property is within Tax Incremental Financing District No. 37 Union Corners and the costs to acquire the Property were charged to the TID. Sales proceeds will be credited to the TID. This second amendment conveys the first 4 phases of the development for \$5 million. Phases 5 and 6 will be conveyed based on demonstration of a financing gap of \$1 million.

### Title

SUBSTITUTE - Authorizing the execution of a Second Amendment to the Purchase and Sale Agreement executed between the City of Madison and Gorman & Company

### Body

WHEREAS, On October 30, 2013 the City of Madison (the "Seller") executed a Purchase and Sale Agreement (the "Agreement") with Gorman & Company, Inc. (the "Buyer") for the conveyance and redevelopment of properties owned by the City located at 2504, 2507 and 2340 Winnebago Street, Madison, WI (all of which are legally described on Exhibit A attached hereto) and which may be collectively referred to as the "Union Corners Parcels"), for a mixed-use redevelopment project to be partially financed by a six million dollar (\$6,000,000) TIF loan; and

WHEREAS, under the terms of the Agreement the Buyer was required to develop the Union Corners Parcels in four phases (the "Redevelopment Project"). Phase 1 of the Redevelopment Project was to consist of

60,000 square feet of medical clinic space and the other three phases were to consist of a mix of residential, retail and commercial space; and

WHEREAS, the Common Council authorized the execution of a First Amendment to the Agreement on October 21, 2014 (the "First Amendment"), which, among other things, expanded the Redevelopment Project to six phases; and

WHEREAS, the Seller and the Buyer have worked diligently to settle on an appropriate TIF loan amount, and the Buyer and the Seller have agreed that a financing gap on the first four phases of the Redevelopment Project ("Phases 1 - 4", which are legally described on Exhibit B attached hereto) is at least approximately Five Million Dollars (\$5,000,000) and the remaining approximately one million dollars (\$1,000,000) in financing gap has yet to be shown by Buyer in order for Buyer to purchase phases five and six ("Phases 5 & 6", which are also legally described on Exhibit B attached hereto); and

WHEREAS, the Buyer and Seller have agreed that in order to underwrite the loan, only Phases 1 - 4 of the Union Corners Parcels will be conveyed at the time of closing, with the Phases 5 & 6 remaining in the Seller's possession with an option to purchase Phases 5 & 6 granted to the Buyer.

NOW THEREFORE, BE IT RESOLVED that the Common Council authorizes the execution of a Second Amendment to the Agreement executed between the City of Madison (the "Seller") and Gorman & Company, Inc. (the "Buyer"), on October 30, 2013, which Second Amendment will provide for the conveyance and redevelopment of Phases 1 - 4, owned by the Seller, for a mixed-use redevelopment project, and the conveyance and redevelopment of Phases 5 & 6 owned by the Seller being subject to an option for the Buyer to purchase Phases 5 & 6, including showing a financing gap of approximately one million dollars (\$1,000,000), and all of the Union Corners Parcels being subject to the following terms and conditions:

A. Capitalized terms used, but not defined, herein shall have the meanings ascribed to them in the Agreement.

B. Section 1 of the Agreement is hereby modified to read, in its entirety:

1. Phases 1 - 4. The Seller shall sell and convey to the Buyer by Warranty Deed (the "Deed"), fee simple ownership of Phases 1 - 4 owned by the Seller, as legally described on the attached Exhibit B, including all improvements located thereon and all appurtenances thereto. Phases 1 - 4 will be developed in the phases shown on the attached Exhibit C as Phase 1, Phase 2, Phase 3, and Phase 4 (individually a "Phase" and collectively, the "Phases"). Phases 1 - 4 shall include portions of vacated roads located within the Phases 1 - 4, including without limitation vacated portions of Winnebago Street, Florence Street, Sullivan Street, and Milwaukee Street.

C. Section 3 of the Agreement is hereby amended to read, in its entirety:

3. Modified Redevelopment Project. The Buyer or other entities owned or controlled by the Buyer, or where the Buyer is a member (the "Buyers") shall collectively develop a mixed-use project on Phases 1 - 4 (the "Modified Redevelopment Project"). The Modified Redevelopment Project shall consist of approximately 60,000 square feet of medical facility space with parking on Phase 1 as required by the City of Madison pursuant to its design review and zoning review process (the "Phase 1 Project") and is also currently contemplated to consist of the following, subject to design and zoning review: (i) a mixed-use building on Phase 2 (the "Phase 2 Project"); (ii) a mixed-use building on Phase 3 (the "Phase 3 Project"); and (iv) a mixed-use retail/residential space with parking stalls on Phase 4 (the "Phase 4 Project"). The Buyer shall develop either the Phase 1 Project or the Phase 2 Project first. The remainder of the Phases may be developed in any chronological order upon the commencement of construction of either the Phase 1 or 2 Projects. The precise uses of the Phases are subject to adjustment based on market conditions and applicable zoning including the approved and recorded General Development Plan.

D. Sections 4.a, 4.b and 4.e of the Agreement are amended to read as follows:

a. The Buyer has completed and submitted to the Seller, a Tax Increment Finance ("TIF") Application for the Redevelopment Project. The application has demonstrated that the Modified Redevelopment Project (consisting of Phases 1 - 4) cannot be developed but for the provision of approximately Five Million Dollars (\$5,000,000) of TIF assistance from the Seller.

b. At the closing of the conveyance of Phases 1 - 4 to the Buyer (the "Closing Date"), the Buyer shall enter into a TIF Loan Agreement with the Seller (the "TIF Loan Agreement") in the amount of approximately Five Million Dollars (\$5,000,000) (the "TIF Loan"). The TIF Loan shall be repaid through tax increments generated by the Modified Redevelopment Project owned by the Buyer on Phases 1 - 4 and/or out of pocket payments by the Buyer under the terms of a corporate guaranty to be executed by the Buyer (the "Corporate Guaranty") as provided in the TIF Loan Agreement. The TIF Loan Agreement shall provide that no Equity Participation Payment shall be due thereunder.

e. Subsequent to the closing on Phases 1 - 4 and execution of the TIF Loan Agreement, separate LLCs of which the Buyer is a member ("Gorman LLC") may be created for the purpose of owning and developing the other Phases as these Phases are ready for development. Ready for development shall be defined as obtaining all required land use approvals for the development of the respective Phase. Prior to the conveyance of any Phase to a Gorman LLC, the Gorman LLC shall provide to the Seller evidence of financing in an amount sufficient to construct the improvements on such Phase in accordance with the approved design therefore. The TIF Loan shall be apportioned as set forth in the column called "Guarantee Amount for each Phase" on the table attached to the First Amendment as Exhibit D (the "Phase Apportionment Table"). Each Gorman LLC shall execute a note and a mortgage encumbering the respective Phase in favor of the City securing payment of the apportioned TIF Loan. Payment of the note shall be guaranteed by the Buyer until the Gorman LLC's net worth equals or exceeds the then-outstanding principal balance of the note, at which time the City shall release the Buyer from any further liability under such guaranty. The original principal amounts of all the notes shall equal approximately five million dollars (\$5,000,000). Each Gorman LLC will agree not to remove assets such that its net worth is less than the then-outstanding balance of the note and shall provide annual financial statements to the City demonstrating that its net worth is not less than the then-outstanding balance of the note. None of the Gorman LLCs will be eligible for additional TIF assistance.

E. Section 4.h is hereby created to read as follows:

Buyer shall have an option to purchase (the "Option") Phases 5 & 6 for the purpose of redeveloping Phases 5 & 6. The Option will be valid for three (3) years from the Closing Date on Phases 1 - 4. The sale price of the Option shall be \$1, contingent upon the Buyer demonstrating a financing gap for the development of Phases 5 & 6 as specified in Exhibit D to the First Amendment. The parcels constituting Phases 5 & 6 can be purchased separately.

F. Section 14.f entitled TIF Loan Documents is hereby amended to delete the second paragraph and replace it with the following:

For the purposes of this subsection, Buyer and Seller must reach agreement by July 31, 2015.

G. Section 5 is hereby amended to replace the date of 2033 with 2035.