



## Legislation Text

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**File #:** 53799, **Version:** 2

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### Fiscal Note

The proposed resolution authorizes a Purchase and Sale Agreement between the City of Madison and Eurofins Scientific, S.E. or its assigns. The City will sell Lot 4 (22.34 acres) within the Madison Center for Industry & Commerce (CIC) for \$2,098,060. Eurofins Scientific, S.E. intends to develop a laboratory and research facility (the "Project") on the purchased property and retain 375 full-time employees. All City expenses due to special assessments, closing costs, and other related fees are covered by the purchase price and CIC capital program. No additional City appropriation is required.

### Title

SUBSTITUTE - Authorizing the Mayor and City Clerk to execute a Purchase and Sale Agreement with Eurofins Scientific, S.E., or its assigns for Lot 4 of CSM Map No. 14573 in the Center for Industry and Commerce.

### Body

WHEREAS, the Common Council adopted a resolution (RES-13-00460, File ID 30382) 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; and,

WHEREAS, 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, and was relieved of any remaining obligations, including the obligation to purchase an additional 78 lots from the City; and,

WHEREAS, the adoption of this resolution will authorize the sale of Lot 4 of CSM Map No. 14573 (22.34 acres) owned by the City in The Center for Industry and Commerce; and,

WHEREAS, Eurofins Scientific purchased Covance Food Solutions on August 1, 2018; and,

WHEREAS, Covance has been a long-term City of Madison employer, with Covance's other existing business units remaining at the current Madison facility; and,

WHEREAS, Eurofins Scientific desires to relocate approximately 375 existing employees from the Covance facility to its own facility and grow the food solutions business over time; and,

WHEREAS, Eurofins Scientific's interest in purchasing over 22 acres of remaining City-owned property within the Center of Industry and Commerce represents a significant investment in the City of Madison, and facilitates an existing employer's expansion needs in a manner consistent with the City's vision for the Center for Industry and Commerce; and,

WHEREAS, the City has negotiated mutually beneficial terms with Eurofins Scientific that recovers City costs related to the property, insures the retention of existing community employees with the likely growth of new jobs over time, and adds to the City's tax base.

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 Eurofins Scientific, S.E. and/or its assigns to an affiliate entity ("Buyer"), for Lot 4 of CSM Map No. 14573 in the Center for Industry and Commerce on substantially the following terms and conditions:

**Buyer:** Eurofins Scientific and/or its assigns (collectively "Buyer") (with the assignee to be a related entity that is controlled by Buyer).

**Seller:** City of Madison ("City")

**Property:** The Buyer will acquire, and City will convey by special warranty deed, the following: Lot 4 (22.34 acres) ("Property") located within the Madison Center for Industry & Commerce ("CIC"); per the CSM Map No. 14573 recorded in the Office of the Register of Deeds for Dane County on August 3, 2017 (the "CSM"). The Property is 973,151 square feet as shown in the CSM.

**Project:** Buyer intends to develop a laboratory and research facility (the "Project") on the Property and retain three hundred seventy-five (375) full time employees ("FTEs") as more fully described below. The FTEs must be paid a living wage as that term is defined in Madison General Ordinance 4.20, each year for four years as described below.

**Purchase Price:** The purchase price for City's fee interest in the Property shall be Two Million Ninety Eight Thousand and Sixty Dollars (\$2,098,060) (the "Purchase Price"). At Closing as defined below, the Buyer shall pay the City One Million Twenty Five Thousand Seven Hundred Eighteen and 00/100 Dollars (\$1,025,718) (the "Net Purchase Price"). The Net Purchase Price shall be payable in cash at Closing, subject to the adjustments and prorations, as described below. The remaining One Million Seventy Two Thousand Three Hundred Forty Two 00/100 Dollars (\$1,072,342) (the "Deferred Purchase Price") shall be deferred and forgiven pursuant to the terms of the Guarantees, as defined below.

**Guarantees:** (i) Completion Guaranty - If completion of the Project has not occurred on or before August 1, 2021 (the "Completion Date"), then Eurofins will owe the City Two Hundred Sixty-Eight Thousand Eighty Five and 50/100 Dollars (\$268,085.50) of the Deferred Purchase Price (the "Completion Guaranty"). Project completion shall be determined by the issuance of a final certificate of occupancy by the City dated on or before the Completion Date; and

(ii) Jobs Guaranty - For a period of four (4) years, if Eurofins has not retained 375 FTEs on the Property following the Completion Date of the Project, as measured annually from the date of a final certificate of occupancy ("CO"), then Eurofins will owe the City Twenty Six Thousand Twenty and 00/100 Dollars (\$26,020) per job for each anniversary year of non-compliance (the "Jobs Guaranty"). The Jobs Guaranty amount shall be capped in each year at Two Hundred Sixty-Eight Thousand Eighty Five and 50/100 Dollars (\$268,085.50) or the Adjusted Deferred Purchase Price amount, as defined below, whichever is lower.

For each year of compliance with this paragraph, the Deferred Purchase Price shall be reduced by Two Hundred Sixty-Eight Thousand Eighty Five and 50/100 Dollars (\$268,085.50) (the "Reductions"). The Deferred Purchase Price less any Reductions earned equals the "Adjusted Deferred Purchase Price" if applicable. The requirement to create or retain FTEs, and verification of their being paid a

living wage, shall be evidenced by an annual certified statement (the "Certification") submitted by Buyer to City and may be verified by an on-site audit by the City of Madison (the "Audit"). Should the Certification and the Audit be found inadequate after independent review to verify the terms of this paragraph in any given year, the Reduction for that year shall not be effective. The City shall provide a written explanation of its decision. Denials of any Reductions may be independently reviewed. Independent review, as used herein, shall mean the review of the Certification and Audit by a single reviewer, who shall be a judge or attorney in good standing with the State Bar of Wisconsin, who has practiced business, real estate or in the substantive area of law related to this LOI for at least ten (10) years and is located in Dane County, Wisconsin (an "Independent Reviewer"). Each party shall submit a list of three (3) Independent Reviewers to the other party within ten (10) days after the City provides written explanation of the inadequacy of the Certification and Audit in any given year. From the combined list, the parties shall agree on the Independent Reviewer. The Independent Reviewer shall conduct his/her review within thirty (30) days, and provide a written explanation of his/her decision. The decision shall be final and binding upon the parties, and the non-prevailing party shall be responsible for the costs of the Independent Reviewer. Any Deferred Purchase Price or Adjusted Deferred Purchase Price amount remaining at the end of the Jobs Guaranty period shall be paid to the City.

The Completion Guaranty and the Jobs Guaranty may be collectively referred to as "the Guarantees." Payment on the Guarantees shall be made upon demand of the City in accordance with the terms of the PSA.

**Due Diligence Period/Buyer's Contingencies:** Buyer shall have one hundred and fifty (150) days after receiving a fully executed purchase and sale agreement ("PSA") ("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 and the Project for Buyer's intended purposes, including, but not limited to, the contingencies listed below (which may be more particularly described in said PSA). Buyer may terminate the PSA during the Due Diligence Period due to the following contingencies ("Contingencies"):

- a) Zoning, survey and permit review;
- b) Document review contingencies (title, etc.);
- c) Environmental evaluation;
- d) Geotechnical evaluation;
- e) Financing contingency;

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 PSA 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 150th day of the Due Diligence Period). The PSA shall include this Due Diligence contingency.

**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 PSA (the "Effective Date"). City shall notify Buyer in writing of this date, which shall become the Effective Date in the PSA, and send Buyer a copy of the fully executed PSA. The Earnest Money will be held by the Title Company in escrow with respect to the purchase of the Property and credited at Closing.

**Title Insurance:** City shall provide to Buyer, at City's expense, within thirty (30) days after the Effective Date a commitment from First American Title Company (the "Title Company") to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price. 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 by the City 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) days following receipt of the title commitment from City. City shall have a reasonable time, but not exceeding thirty (30) 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 PSA by reason of a valid legal defect in title, which Buyer is unwilling to waive, the PSA shall be void, and the Buyer shall be entitled to a return of the Earnest Money.

**Closing Date:** "Closing" shall occur within thirty (30) days after the satisfaction or waiver of Buyer's Contingencies.

**Special Assessments:** The City has disclosed that the Total Estimated Special Assessments for the Property is One Million Two Hundred Eighty Four Thousand Two Hundred Sixty Nine and 00/100 Dollars (\$1,284,269) (the "TESA") for its share of the City's public works project no. 11464 contract no. 7843 (the "PW Contract"). After the work in the PW Contract is completed, City Engineering will finalize the Property's share of said work and may revise the TESA. The Property's final special assessment (the "FSA") will be determined at Closing.

The City has agreed to pay at Closing Five Hundred and Eight Thousand One Hundred Thirty Seven and 00/100 (\$508,137) of the FSA (the "City SA"). At Closing, the Buyer will pay the difference of the FSA and City SA.

Buyer shall be responsible for any future special assessments against the Property on or following the date of Closing.

**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 and City shall share equally the closing fee charged by the Title Company.

City will pay the Wisconsin real estate transfer tax and the recording fees to remove any existing encumbrances.

Buyer will be responsible to pay all costs of providing a loan title insurance policy to Buyer's lender, if applicable.

Buyer will pay the recording fees to record the deed and any loan documents for Buyer's lender and any closing costs.

**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 (the "HRCF") and water main connection fees, and CARPC fees, etc. The MMSD and HRCF connection fees are due at Closing.

Buyer is responsible for the cost of installation of all private utilities to service the Property, and shall notify the private utility companies where it would like the infrastructure to be located within the 10' utility easement on the Property.

**Real Estate Commission:** City acknowledges that Chase Brieman of CBRE, Inc. ("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 PSA 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 the City to the Buyer.

**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 PSA. 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 PSA is in effect, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to City for approval.

**Limited Representations and Warranties-AS-IS Condition:** Except as otherwise provided herein, and in the Deed, 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, in entering into the PSA or in closing the transaction described therein. Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the Due Diligence requirement provided in the PSA.

**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 in the performance of any inspections or testing of the Property, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees provided, however, the indemnification obligations shall not apply to the extent of such negligence. This paragraph shall survive termination and assignment or transfer of the PSA.

**Construction Contingency:** Buyer shall agree to commence construction on the Property within eighteen (18) months of the Effective Date ("Construction Deadline"). In this section, "commence construction" shall mean the pouring of footings, the installation of pilings, the construction of columns, or the construction of any vertical permanent portion of the Buyer's project ("Commence Construction").

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 PSA, but less any closing, title, brokerage fees and transfer costs incurred by the City associated with the sale described in the PSA 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 Mayor and City clerk are hereby authorized to execute the Purchase and Sale Agreement and further execute and record any documents necessary to carry out the terms of the Purchase and Sale Agreement in a form to be approved by the City Attorney.