



Legislation Text

File #: 24476, Version: 2

Fiscal Note

The City's total costs for acquiring the property are an estimated \$935,323 (including purchase costs of \$916,860 (\$14 per sq ft x 65,490 sq ft), \$10,663 for prorated taxes and miscellaneous closing costs, and \$7,800 for a Phase 2 Environmental Assessment). The City is selling the property for \$982,350 (\$15 per sq ft x 64,490 sq ft). The property currently lies outside a Tax Incremental Financing District, so sale proceeds will be applied to reduce General Obligation borrowing debt service costs. The estimated cost to the City for Livingston Street median and traffic signal improvements is \$550,000 and will be included in the 2013 capital budget, subject to approval by the Common Council. The Agreement includes an option for the City to reacquire the property at the purchase price if the buyer does not commence construction within 180 days of closing. Exercise of the option would require Council authorization and funding approval.

Title

SUBSTITUTE Accepting a Selection Committee's recommendation of the Gebhardt Development, LLC proposal for the purchase and redevelopment of City-owned properties in the 700 Block of East Washington Avenue and authorizing the execution of a Purchase and Sale Agreement with Gebhardt Development, LLC for the purchase and redevelopment of these properties.

Body

WHEREAS, the City of Madison established a Land Banking Fund to purchase and stabilize developable parcels of land in the City of Madison; and,

WHEREAS, the City's Economic Development Committee approved guidelines for the purchase and sale of land acquired with Land Banking Funds (attached); and,

WHEREAS, the City used the Land Banking Fund to purchase properties in the 700 and 800 Blocks of East Washington Avenue (the "Sites"), as shown on the attached; and,

WHEREAS, the City issued a Request for Proposals (the "RFP") seeking developer interest in the purchase and redevelopment of the Sites; and,

WHEREAS, the City received six proposals (the "Proposals") that met the submission requirements of the RFP; and,

WHEREAS, an ad-hoc "Selection Committee" of Alders, City staff, and development professionals approved by the Mayor reviewed the Proposals, and have recommended that the following proposals for the Sites be accepted by the Common Council:

- 700 Block North Site: Gebhardt Development, LLC Proposal
- 800 Block North Site: Urban Land Interest, LLC Proposal
- 800 Block South Site: The Rifken Group Proposal; and,

WHEREAS, City staff have negotiated the terms and conditions of a Purchase and Sale Agreement with Gebhardt Development, LLC for the purchase and redevelopment of the 700 Block North Site, as set forth in a Letter of Intent dated November 7, 2011 ("LOI").

NOW THEREFORE BE IT RESOLVED that Common Council accepts the Selection Committee's recommendation of the Gebhardt Development, LLC Proposal, as may be amended through the development

review process, for the 700 Block North Site; and,

BE IT FURTHER RESOLVED that the Common Council authorizes the execution of a Purchase and Sale Agreement (the "Agreement") between the City of Madison (the "Seller") and Gebhardt Development, LLC or another entity owned or controlled by Gebhardt Development, LLC or its principals (the "Buyer"), for the purchase and redevelopment of properties owned by the Seller located at 741 East Mifflin Street and 754 East Washington Avenue in the City of Madison, Wisconsin (collectively the "Property"), as legally described below and shown on the attached exhibit, for a mixed-use redevelopment project subject to the following terms and conditions:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Quit Claim Deed (the "Deed"), fee simple ownership of the Property, including all improvements located thereon and all appurtenances thereto.
2. Project. The Buyer shall develop a mixed-use project (the "Project") on the Property consisting of approximately 30,000 square feet of retail/commercial/office space, approximately 185 residential rental units and approximately 240 parking stalls in a structured parking facility.
3. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Seller or the Buyer, as indicated on the signature page.
4. Purchase Price. The total purchase price for the Seller's interest in the Property (the "Purchase Price") shall be Nine Hundred Eighty-Two Thousand Three Hundred Fifty and 00/00 Dollars (\$982,350.00) (\$15.00 per square foot multiplied by the number of square feet (65,490) of the Property, as determined by the ALTA Survey to be provided by the Seller in accordance with Paragraph 12). The Purchase Price shall be payable in cash at Closing, subject to the adjustments and prorations herein provided.
5. Earnest Money. Within ten (10) business days of the Effective Date, the Buyer shall pay to the Seller Ten Thousand and 00/100 Dollars (\$10,000.00) as "Earnest Money", which will be non-refundable except as otherwise provided in Paragraphs 10, 11 and 15 of the LOI and the corresponding provisions of the Agreement, to be applied toward the Purchase Price at Closing in accordance with Paragraph 4 above.
6. No Representations and Warranties; AS-IS Condition. The 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 the Seller, or any other persons for the Seller, in entering into the Agreement or in Closing the transaction described herein. The Buyer's Closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the Buyer's contingencies, as generally described in Paragraph 10 below. In Closing and completing the transaction, the Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of the Seller or its agents or employees.
7. Demolition. Provided the Buyer has elected to proceed with the purchase of the Property following review of the Buyer's contingencies pursuant to Paragraph 10 below, the Buyer shall be responsible for the demolition of all buildings and improvements (including removal of asphalt and concrete surfaces) on the Property. The Seller will cooperate with the Buyer in seeking federal, State, County and other funds available to apply to the cost of demolition.
8. Environmental Remediation. Provided the Buyer has elected to proceed with the purchase of the Property following review of the Buyer's contingencies pursuant to Paragraph 10 below, the Buyer shall be responsible for the remediation of all environmental contamination on the Property. The Seller will

cooperate with the Buyer in seeking federal, State, County and other funds to apply to the cost of remediation.

9. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Buyer's Contingency Period as described in Paragraph 10 below, the Seller will reproduce at the Seller's expense and send to Buyer at Buyer's office copies of all environmental studies, reports, permits, applications and remediation plans or assessments of the Property and all studies, reports, plans or assessments related to the condition of the improvements on the Property including, but not limited to, asbestos, lead-based paint inspections and other hazardous waste inspections related to the physical condition of the improvements on the Property in the Seller's possession or control.
10. Buyer Contingencies. The Buyer shall have one hundred eighty (180) days from the Effective Date (the "Buyer's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate the Agreement if any of the Buyer's contingencies are unacceptable, in the Buyer's sole discretion. If the Buyer timely terminates the Agreement as a result of any of the Buyer's contingencies, the Earnest Money shall be promptly refunded to the Buyer.
- a. Land Use Approvals. The Buyer securing all land use approvals for the construction of the Project. Such approvals may include, but not be limited to: approval of a conditional use or Planned Unit Development and obtaining demolition permit for the demolition of existing structures, approval by the Urban Design Commission and all other zoning, building, engineering, traffic and similar approvals and permits necessary or required to complete the Project.
 - b. Project Financing. The Buyer securing financing acceptable to the Buyer for the construction of the Project. Such financing may include, but not be limited to, Midwest Disaster Bonds, New Market Tax Credits, and Tax Incremental Financial Assistance.
 - c. CSM. The Buyer securing approval of a certified survey map for the Property, to be recorded at or prior to Closing.
 - d. Inspections and Testing. The Buyer obtaining various inspections and testing of the Property. The Buyer, at its sole expense, may obtain an inspection of all buildings and related improvements located on the Property, a Phase 1 or 2 environmental site assessment of the Property and related testing, soils testing and any other inspections or testing deemed necessary by the Buyer. In no event shall the Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property or any improvements located thereon.

The Buyer's Contingency Period may be extended upon written agreement of the parties.

11. Seller Contingencies. The Seller shall have one hundred eighty (180) days from the Effective Date (the "Seller's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate the Agreement if any of the Seller's contingencies cannot be completed despite the Seller's best efforts. If the Seller timely terminates the Agreement as a result of any of the Seller's contingencies, the Earnest Money shall be promptly refunded to the Buyer.
- a. TID Boundary Amendment. The Seller amending the current boundaries of Tax Incremental Financing District No. 36 Capitol Gateway to include the Property.
 - b. Capital Budget Authorization. The Seller obtaining budget authorization from the Common Council of the City of Madison for any TIF financial assistance.
 - c. Redevelopment District Boundary Amendment. If required for the Buyer to receive Midwest

Disaster Bonds, the Seller requesting that the City of Madison's Community Development Authority amend the current boundaries of the 800 Block East Washington Redevelopment District or create a new redevelopment district to include the Property.

- d. Median Break. The Seller obtaining budget authorization for a pedestrian friendly median break with a left in only center median with ½ signals at the intersection of East Washington Avenue and Livingston Street, which will be completed by the Seller, at its cost, within a timeframe corresponding with the completion of the Project. The Seller shall not be obligated to construct the median break and left in only center median with ½ signals if the Buyer has not commenced construction of the Project by December 31, 2012.

The Seller's Contingency Period may be extended upon written agreement of the parties.

12. Survey. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days of execution of the Agreement, an ALTA/ACSM Land Title Survey of the Property that meets the 2005 Minimum Standard Detail Requirement, certified as of a current date in favor of the Buyer and title company providing the title insurance described in Paragraph 16.
13. Residential Development Restriction. The Seller shall condition the sale or transfer of its parcels located at 802 and 854 East Washington Avenue, or any portion thereof, to prohibit the completion of any residential development on said parcels prior to June 1, 2014. For the purposes of this provision, "completion" shall be defined as the issuance date of a certificate of occupancy by the City of Madison for said residential development. The restriction set forth in this provision shall expire if the Buyer has not commenced construction of the Project by June 1, 2012 (the "Commencement Date"). The Commencement Date may be extended to July 30, 2012 by written agreement of the parties.
14. General Public Parking Restriction. Parking in the structured parking facility on the Property shall be restricted to the tenants, employees, customers and visitors of the Project during the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday (excluding holidays). Rental of stalls to the general public in said structured parking facility shall be prohibited on the days and during the hours provided herein.
15. Access to Property. The Buyer and the Buyer's authorized agents, engineers, consultants and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing anticipated by the Buyer's contingency contemplated in Paragraph 10.d. including, but not limited to, a Phase 1 or 2 environmental assessment of the Property and/or a physical inspection of any building and related improvements located on the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer will repair all damages caused by its inspections, at the Buyer's cost, so that the condition of the Property is returned to as good or better condition as existed prior to the inspection.
16. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing a commitment from First American Title Insurance Company to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Property, as of a date no more than fifteen (15) days before such title proof is provided to the Buyer, to be in the condition called for in the Agreement, and further subject only to liens which will be paid out of the proceeds of the Closing and to any exceptions acceptable to the Buyer ("Permitted Exceptions"). The Buyer shall notify the Seller of any valid objection to title, in writing, prior to Closing. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to carry out the Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, the Agreement shall be void and the Buyer shall be entitled to a return of the Earnest Money.

17. Option Agreement. At Closing, the Seller and the Buyer shall execute an Option Agreement that will provide that if the Buyer has not commenced construction of the Project within one hundred eighty (180) days from the date of Closing (the "Deadline") that the Seller shall have the option to buy the Property from the Buyer at the Purchase Price subject, however, to delays caused by Force Majeure events, in which events the Buyer shall be granted a day-for-day extension of the Deadline for the duration of the delay caused by the Force Majeure event. "Force Majeure" shall be defined as any events, actions or omissions which are outside of the reasonable control of the Buyer including, but not limited to: severe weather or natural disasters; Acts of God or war; lawsuits or other actions commenced by third parties to delay, stop or materially modify the Project; strikes, lockouts, picketing (legal or illegal) or riots; fire or other casualty; accidents; unavailability of fuel, power, supplies or materials; the passage or application or limitation of any law, regulation, ordinance or order by any government authority which has the effect of preventing commencement of construction; delays in deliveries; or delays caused by the action or omission of the Seller. "Commenced construction" or "commencement of construction" shall be defined as substantial completion of the foundation of the Project. The Seller shall have sixty (60) days after expiration of the Deadline, as may be extended due to Force Majeure events as provided herein, to exercise the option as provided in the Option Agreement.

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

THE PROPERTY LEGAL DESCRIPTIONS

741 East Mifflin Street
251-0709-133-0202-5
Lots 7 and 12, Block 133, Original Plat, City of Madison, Dane County, Wisconsin

754 East Washington Avenue
251-0709-133-0210-8
Lots 8, 9, 10 and 11, Block 133, Original Plat, City of Madison, Dane County, Wisconsin.