



## Legislation Text

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**File #:** 50893, **Version:** 1

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### **Fiscal Note**

The proposed resolution approves a Purchase and Sale Agreement between the City of Madison and Motion W Industrial, LLC for property within The Center for Industry and Commerce (CIC). Motion W Industrial, LLC has requested to purchase land adjacent to their recently purchased property and within Lot 2 of the CIC, which is owned by the City and currently under an Option to Purchase Agreement by Hoepker Center, LLC. A companion resolution (File 50892) will be introduced to the Common Council to approve amending the Option to Purchase Agreement between the City and Hoepker Center, LLC. The total purchase price of the "Expansion Property" in Lot 2 by Motion W Industrial, LLC is \$56,575. After adding proceeds of \$5,004.90 from a pro rata share of outstanding special assessments and subtracting closing costs, the estimated net proceeds from the sale is \$61,791. Proceeds from the sale will be distributed to the General Land Acquisition Fund and applied towards paying off special assessments on City-owned properties located elsewhere within the CIC.

### **Title**

Authorizing the execution of a Purchase and Sale Agreement with Motion W Industrial, LLC for a portion of Lot 2 in The Center for Industry & Commerce.

### **Body**

WHEREAS, on October 6, 2016, the City executed a Purchase and Sale Agreement ("PSA") with Greywolf Partners, Inc., as assigned to Motion W Industrial, LLC ("Buyer"), for the acquisition of the City owned Lots 21-23 and 32-34 ("Property") in The Center for Industry and Commerce ("The CIC") as approved by the Common Council via Resolution Enactment No. Res-16-00567, File No. 43702; and

WHEREAS, the closing on the Property occurred on February 7, 2018; and

WHEREAS, the Buyer has requested to purchase an additional parcel of adjacent land that is 22,630 square feet ("Expansion Property") within Lot 2 of The CIC ("Lot 2") owned by the City, and currently under an Option to Purchase Agreement by Hoepker Center, LLC ("HCLLC") as approved by Res 16-00714 on September 20, 2016; and

WHEREAS, the Buyer will assemble the Expansion Property with Lots 21-23 and Lots 32-34, and create a certified survey map ("CSM"), which will be sent to the City for its approval; and

WHEREAS, HCLLC has agreed to amend their Option to Purchase Agreement ("Option") to remove the Expansion Property from Lot 2 to allow Buyer to purchase it; and

WHEREAS, Lot 2 will have the new legal description and the Option to Purchase will be amended to include this new information; and

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 Motion W Industrial, LLC. ("Buyer") for the purchase of the Expansion Property in Lot 2 within The CIC on substantially the following terms and conditions:

1. Expansion Property. Buyer shall purchase and City shall sell and convey by Warranty Deed ("Deed") fee simple ownership of the Expansion Property, including all improvements located thereon and all appurtenances thereto subject to the approval by the Common Council and HCLLC. The Expansion Property is 22,630 square feet. See Exhibit A for the depiction of the Expansion Property.

2. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by City or Buyer, as indicated on the signature page of the Agreement.
3. Purchase and Sale Agreement. City agrees to provide Buyer with a draft of the Agreement within ten (10) business days of Common Council approval of the terms stated herein.
4. Purchase Price. The purchase price for City's interest in the Expansion Property shall be \$2.50 per square foot of land area or \$56,575.00 Fifty Six Thousand Five Hundred Seventy Five Dollars ("Purchase Price"). The Purchase Price shall be payable in cash at Closing, as described in Paragraph 16, subject to the adjustments and prorations provided in the Agreement.
5. Earnest Money. Within five (5) days of the Effective Date, Buyer shall deposit with First American Corporation ("Title Company") the amount of Five Thousand and no/100 Dollars (\$5,000.00) as "Earnest Money," which will be non-refundable except as otherwise provided in Paragraphs 6 and 14, and shall be applied towards the Purchase Price at Closing, in accordance with Paragraph 4. In the event of Buyer's default prior to Closing, City may seek to retain the Earnest Money as its sole remedy.
6. Due Diligence Period. Buyer shall have ninety (90) calendar days following the Effective Date ("Due Diligence Period") to obtain, at Buyer's sole cost, acceptable financing, title, survey, and any physical, environmental or governmental conditions and approvals necessary for Buyer's intended use of the Expansion Property. If within the Due Diligence Period Buyer determines, in its sole discretion, that it does not desire to purchase the Expansion Property, Buyer must provide written notice to City of such desire and the Agreement shall terminate immediately upon City's receipt of said notice. If Buyer timely terminates the Agreement as provided in this paragraph, the Earnest Money shall be immediately refunded to Buyer.

Buyer agrees that if it terminates the Agreement, as provided for therein, or fails to close the transaction contemplated thereby for any reason, then, Buyer shall deliver to City, at no cost to City, complete and accurate copies of all of Buyer's due diligence materials (will be provided without warranty or representation as to the accuracy of such information) other than any attorney work product or attorney-client privileged documents.

Buyer shall keep the Expansion Property free of all liens in connection with its due diligence of the Expansion Property and shall cause all such liens to be removed immediately upon being notified of same.

If Buyer does not provide written notice to City terminating the Agreement on or prior to the end of the Due Diligence Period, the Agreement shall remain in full force and effect, Buyer shall accept the Expansion Property as-is, and the parties shall proceed to close the transaction as provided in the Agreement.

Should Buyer desire to close prior to the end of the Due Diligence Period, Buyer may provide City with written notice of its intent to do so. The provision of such notice by Buyer shall not affect the terms contemplated in the Agreement, except that the closing date shall occur on or before thirty (30) days from the date City receives such notice, unless the parties mutually agree in writing to another date.

7. Construction Contingency. Buyer shall agree to commence construction on the Expansion Property assembled with the Property on or before April 1, 2019. In the event Buyer fails to commence construction in that timeframe, City shall have the right, but not the obligation, to purchase the Expansion Property back from Buyer at the Purchase Price less any closing, title and transfer costs that which will be further defined in the Agreement.

8. Access to the Property. Buyer and Buyer's authorized agents, engineers, consultants, appraisers, and contractors shall be permitted access to the Expansion Property for the purpose of conducting the inspections and testing during the Due Diligence Period including, but not limited to: a Phase 1 or 2 environmental assessment and/or a physical inspection at reasonable times with at least twenty-four (24) hours' prior written notice to City. Buyer's and Buyer's authorized agents, engineers, consultants, appraisers, and contractors access to, and inspection of, the Expansion Property shall be at Buyer's sole risk and expense and City shall have no responsibility therefor. Buyer shall, at Buyer's sole cost, repair all damage caused by its inspections or testing so that the condition of the Expansion Property is returned to as good or better condition as that which existed prior to the inspections or testing.
9. Successors and Assigns. The provisions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.
10. Insurance. Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors performing work on the Expansion Property shall carry commercial general liability insurance covering as insured Buyer and naming City, its officers, officials, agents and 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 the Agreement. 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 Expansion Property. If the coverage required above expires while the Agreement is in effect, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to City for approval.
11. Lease. City shall represent that the Expansion Property is not leased or occupied, and City shall agree that it shall not enter into any lease or rental agreement for the Expansion Property, or any portion thereof, or allow the occupation of the Expansion Property during the Due Diligence Period and through the date of closing, without the prior written consent of Buyer.
12. Personal Property. The purchase of the Expansion Property does not include any personal property.
13. Survey/CSM. Buyer at its sole cost shall provide City with the following: (i) the Expansion Property metes and bounds description and area; (ii) a metes and bounds description and area of the remaining land of the Lot 2 (Lot 2 of CSM 14573) less the Expansion Property; (iii) a two lot certified survey map ("CSM") including the revised Lot 2 within The CIC (CSM 14573) less the Expansion Property and the assemblage of the Expansion Property and Lots 21-23 and Lots 32-34 of The CIC subdivision. After the approval of the new CSM by the City. CJ Engineering will set the property corners of the new CSM, including the Expansion Property.
14. Title Insurance. City shall provide to Buyer, at Buyer's expense, within twenty (20) days after the Effective Date a commitment from First American Corporation ("Title Company") to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents. Any gap endorsement desired by Buyer shall be provided at Buyer's sole expense. The commitment shall show title to the Expansion Property, as of a date no more than fifteen (15) days before such title proof is provided to 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 Buyer ("Permitted Exceptions"). Buyer shall notify City of any valid objection to title, in writing, within fifteen (15) days of Buyer's receipt of the title commitment. City shall have a reasonable time, but not exceeding five (5) days, to remove the objections and closing shall be extended as necessary for this purpose. Should City be unable or unwilling to carry out the Agreement by reason of a valid legal defect in title, which Buyer is unwilling to waive, the Agreement shall be void and the Buyer shall be entitled to a return of the Earnest Money as its sole remedy.

15. Limited Representations and Warranties: AS-IS Condition. Except as otherwise provided in the Agreement, Buyer shall purchase the Expansion 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 Agreement or in closing the transaction described therein. Except as provided below, Buyer's closing on the acquisition of the Expansion Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Expansion Property and has waived or satisfied the due diligence requirements provided in Paragraph 6 above.

16. Closing.

- a. Closing ("Closing") shall occur within thirty (30) days of the expiration of the Due Diligence Period, or Buyer's earlier waiver of its due diligence requirements, unless extended under Paragraph 6 or if the parties mutually agree to a different date.
- b. City agrees to execute and deliver to Buyer at Closing the Deed conveying the Expansion Property to Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and the Permitted Exceptions.
- c. Buyer shall pay all recording/filing fees except that City 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 the Agreement.
- d. Buyer shall be responsible for any and all special assessments, against the Expansion Property existing as of the date of the Agreement. City Engineering will allocate a prorata share of estimated special assessments of Lot 2 to the Expansion Property during the Due Diligence Period. Buyer shall be responsible for any future special assessments against the Expansion Property following the date of Closing.
- e. The City prepaid prior special assessments totaling \$65,327 ("Prior SA") on Lot 2 in order to record the CSM. As part of the Option, HCLLC was to reimburse the City for the Prior SA if it closes on Lot 2. Buyer shall pay City at Closing its share of the Prior SA or \$5004.90.
- f. City shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property. Buyer shall pay the cost to have the Title Company prepare the electronic real estate transfer form.
- g. City agrees to execute and deliver to the Title Company any affidavits required to issue an owner's policy in the condition called for by the Agreement including, but not limited to, an Owner's Affidavit, Gap Indemnity, and Non-Foreign Transferor affidavit.
- h. Buyer shall pay all costs of providing the title commitment and Owner's Policy of Title Insurance to Buyer; Buyer shall be responsible for any simultaneous issue premium for a Lender's Policy.
- i. Buyer shall pay the closing fee charged by the Title Company.

17. Fees. Buyer will be responsible for Madison Metropolitan Sewer District connection fees and the Hanson Road Sanitary Sewer connection fees at Closing, and any future impact/connection fees related to any development on the Expansion Property after Closing, .
18. Broker Representation: Buyer agrees that City shall not be responsible for any fee claimed by a broker regarding the representation of the City or Buyer in this matter. In the event there is a brokerage fee connected to the sale of the Expansion Property, Buyer will pay for it at Closing.

BE IT FURTHER RESOLVED that the net proceeds from the sale of the Expansion Property shall be credited against the outstanding special assessments within The CIC on any City owned lot(s).

BE IT FURTHER RESOLVED that the Option Agreement shall be amended to remove the Expansion Property and to make any other changes, including to the purchase price, consistent with such amendment.

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.