



Legislation Text

File #: 25624, Version: 1

Fiscal Note

The proposed acquisition cost, prorated real estate taxes and related closing costs of approximately \$278,260.50 are available in Account No. EW01-58201-810517-00-0000000-00000000-00000000.

Title

Authorizing the execution of an Offer to Sell Real Estate with FHB Investments, LLC for the purchase of Lot 52 and part of Lot 51 in the Fourth Addition to World Dairy Center for the development of a high capacity well in the southeast side of Madison.

Body

The City of Madison Water Utility (the "WU") is seeking a site for a high capacity municipal well on the southwest side of the City. The WU has previously obtained approval to purchase 4901 Tradewinds Parkway and to conduct preliminary testing for the siting of a high capacity municipal well. Although the water quality was found to be acceptable, the projected capacity of the proposed well site did not meet the needs of the WU at this time. The WU determined that it would investigate an additional site to see if a capacity well could be developed at another location.

NOW, THEREFORE BE IT RESOLVED that the Common Council of the City of Madison authorizes the Mayor and City Clerk to execute an Offer to Sell and Purchase ("Offer") with FHB Investments, LLC or assigns (the "Seller") for approximately 1.825 acres of land located at 4949 Prairie Dock Drive (the "Real Estate"), as shown and identified on attached Exhibit A, subject to the following terms and conditions:

1. Description. The Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the Real Estate. The Real Estate is shown on Exhibit A and is legally described as: FOURTH ADDITION TO WORLD DAIRY CENTER, LOTS 52 & 51 EXC THAT PART OF LOT 51 DESC AS FOL: COM SE COR OF SD LOT 51, TH N 89 DEG 33 MIN 15 SEC W ALG S LN OF SD LOT 78.26 FT TO POB, TH N 89 DEG 33 MIN 15 SEC W 271.37 TO PT OF CUR LEFT, RAD 196 FT, CHRD BRS 56 DEG 09 MIN 54 SEC W 23.86 FT, TH N 45 DEG 28 MIN 04 SEC E 336.92 FT TO PT OF CUR LEFT, RAD 180 FT, CHRD BRS S 54 DEG 14 MIN 40 SEC E 64.91 FT, TH S 00 DEG 26 MIN 45 SEC W 213.76 FT TO POB, recorded in Volume 57-191A of Plats on Pages 795 - 800 as Document No. 3486487, Dane County Register of Deeds, Madison, Wisconsin.

2. Purchase Price. The total purchase price to be paid by Buyer to Seller for Seller's conveyance of fee simple ownership of the Real Estate (the "Purchase Price") shall be Two Hundred Seventy Eight Thousand, Two Hundred and Sixty Dollars and 50/100 cents (\$278,260.50). The Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided.

3. Earnest Money. Following Common Council approval and upon execution of this Offer by the parties, the Buyer shall pay the Seller \$2,500 Earnest Money. This Earnest Money shall be non-refundable and shall be applied towards the Purchase Price at closing.

4. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, at least ten (10) business days prior to closing a commitment from a title insurance company licensed in Wisconsin to issue an owner's title insurance policy in the amount of the total Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Real Estate, as of a date no more than fifteen (15) days before such title commitment is provided to the Buyer, subject only to liens which will be paid out of the proceeds of the closing, the standard exceptions listed in Section 7(b) below and to any title insurance exceptions acceptable to the Buyer. The Buyer shall notify the Seller of any valid objection to title, in

writing, within fifteen (15) days of receiving the title commitment. The Seller shall have a reasonable time, but not exceeding fifteen (15) days from Buyer's objection notice, to remove the objections, and closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to carry out this Offer by reason of a valid legal defect in title which the Buyer is unwilling to waive, this Offer shall be void. In the event the Buyer makes no written objections to title on or before fifteen (15) days following receipt of the title commitment, Buyer shall be deemed to have accepted the condition of title and this contingency shall be deemed waived.

5. No Personal Property. The transaction contemplated by this Offer does not include any personal property.

6. Seller's Representations and Warranties.

a) Seller hereby makes the following representations and warranties in connection with Buyer's purchase of the Real Estate, and no others, express or implied, which representations and warranties shall be true as of the closing date hereof:

b) Seller has the corporate authority necessary to enter into this Agreement and comply with Seller's obligations hereunder;

c) There are no pending or, to Seller's knowledge, threatened condemnation or eminent domain proceedings which would affect the Real Estate;

d) There are no undisclosed agreements between Seller and any other party which relate to the Real Estate;

e) Until the closing date, the Real Estate will be maintained in substantially the same condition as they are in on the date of this Agreement, subject to ordinary wear and tear and casualty damage; and

f) There is no litigation pending or, to Seller's knowledge, threatened which would affect the Real Estate or the use thereof by Buyer.

7. Condition of Real Estate.

a) Buyer is hereby purchasing the Real Estate in "AS-IS/WHERE-IS" condition and "with all faults", and agrees that it relies upon no warranties, representations or statements by Seller, or any other persons for Seller, in entering into this Agreement or in closing the transaction described herein, except for the express representations and warranties set forth in Paragraph 6 hereof. Buyer's closing on the acquisition of the Real Estate shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Real Estate and has waived or satisfied Buyer's inspection contingency set forth in Paragraph 8 below. In closing and completing this transaction, Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of Seller or their agents or employees except those expressly set forth in Paragraph 6 above.

b) Except for the express representations and warranties set forth in Paragraph 6 above, Seller makes no warranties, representations or statements whatsoever, express or implied, concerning or relating to the Real Estate, including without limitation: the income or expenses of the Real Estate; zoning and building codes and other similar restrictions; availability or cost of utilities; the environmental condition of the Real Estate; the presence or absence of any hazardous substances, hazardous materials, petroleum, or any substances regulated by federal, state or local law in, on or under the Real Estate; compliance of the Real Estate with any law, regulation, ordinance or similar requirement, including without limitation the Americans with Disabilities Act; or the physical condition of the Real Estate or any improvements thereon. Buyer acknowledges that no agents, employees, brokers or other persons are authorized to make any representations or warranties for Seller.

c) Buyer (and any party claiming through or under Buyer) hereby agrees that following the closing, Seller shall be fully and finally released from any and all claims or liabilities against the Seller relating to or arising on account of the condition of or title to the Real Estate, including without limitation, any matters specifically referenced in this Agreement. These Paragraphs 7(a) through (c) shall survive the closing of this Agreement.

8. Contingencies.

a) Environmental Conditions. The Buyer and its agents shall have the right to conduct investigations, inspections and testing relating to environmental conditions of the Real Estate including, but not limited to, soil samples, site assessments and surveys as the Buyer deems reasonably necessary. If the results of such testing are not satisfactory to the Buyer, the Buyer shall so notify the Seller in writing on or before ninety (90) days after the date of full execution of this Offer. Upon receipt of such notice, the Seller shall have the option to either (a) remediate or otherwise correct the environmental conditions(s) affecting the Real Estate and the closing shall be extended as necessary for this purpose; or (b) terminate this Offer by giving written notice to the Buyer at any time prior to the date of closing. In the event the Buyer makes no written objections regarding environmental conditions on or before ninety (90) days following acceptance of this Offer, this contingency shall be deemed waived.

b) Right of Entry. Upon execution of this Offer, the Seller shall provide the Buyer with a Right of Entry that will allow the Buyer, and its agents and contractors, access to the Real Estate to conduct any and all testing activities required for sitting a high capacity municipal well on the Real Estate. The Right of Entry shall be effective until December 31, 2012 or the date of closing, whichever occurs first. Any agent or contractor of the Buyer who enters the Real Estate on behalf Buyer shall add Seller as an additional insured to their commercial general liability policy. Should, at its sole discretion, the Buyer determines that the results of the test well are unsatisfactory, the Buyer may terminate this Offer by providing the Seller with written notice at any time prior to the closing. Upon termination of this Offer, the Buyer shall, at its sole expense, restore the Real Estate to a condition that is as good or better than what existed prior to the Buyer's testing activities.

c) The purchase and sale of the Real Estate shall be closed no later than December 31, 2012, and shall occur at the office of the title insurance company issuing the commitment for title insurance, unless the parties agree in writing to another date or place.

d) The Seller agrees to execute and deliver to the Buyer at closing a Special Warranty Deed conveying the Real Estate to the Buyer free and clear from all liens and encumbrances, excepting any exceptions to title not objected to (or waived) by Buyer pursuant to the attached Offer to Purchase and Sell Real Estate and 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.

e) The Buyer shall pay all recording/filing fees, except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Real Estate to be in the condition called for by this Offer.

f) The Seller shall pay all real estate transfer taxes payable pursuant to Section 77.25, Wisconsin Statutes, if any.

9. Real Estate Taxes. Net general taxes shall be prorated at the time of closing based on the net general taxes for the current year, if known, or latest assessment times the latest known mill rate.

10. Special Assessments. The Seller 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 Real Estate that have been commenced as of the date of this Offer to Purchase and Sell Real Estate.

BE IT FURTHER RESOLVED, that this resolution authorizes the Mayor and City Clerk to execute and offer any and all documents necessary to complete this transaction in a form acceptable to the City Attorney.