



## Legislation Text

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**File #:** 29966, **Version:** 1

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### Fiscal Note

The Purchase and Sale Agreement required the City to establish an environmental escrow account to be used by the developer to pay for environmental remediation and asbestos abatement. This Amendment increases the escrow account from \$100,000 to \$200,000, thereby increasing the estimated cost of the total project from \$13.8 million to \$13.9 million (see RES-12-00873 for details on the initial estimated cost). This amount would be offset on a prorated basis by any applicable grants received by the developer.

### Title

Authorizing the execution of a First Amendment to the Purchase and Sale Agreement executed between the City and Hovde Properties, LLC.

### Body

The City of Madison executed a Purchase and Sale (the "PSA") with Hovde Properties LLC (the "Developer"), dated December 10, 2012, that provided that the Developer will acquire from the City the Madison Fire Department Administration Building located in the 300 Block of West Johnson Street for assemblage into the Developer's mixed-use development condominium project (the "Project") located at 305-309 West Johnson Street. The Madison Fire Administration Building (the "Building") will be demolished by the Developer. The City will purchase a "grey box" condominium unit (the "Fire Admin Condo Unit") and parking stalls within the Project for the purpose of providing administrative office and storage space for the Madison Fire Department. The City shall be responsible for the build out of the Fire Admin Condo Unit. The Madison Fire Department's administration offices will relocate to leased space until the Fire Admin Condo Unit is built out.

Subsequent to the execution of the PSA, certain conditions and dates have changed that necessitate an amendment to the PSA (the "First Amendment"). Section 2.b of the PSA currently provides that \$100,000 of the proceeds of sale received by the City for the sale of the Building be placed in an Environmental Escrow Account to be used for the Developer for asbestos abatement within the Building and remediation of any environmental contamination the City-owned land that the Building is located on. Environmental testing on the City owned property has determined that the remediation required is more extensive than previously estimated. The First Amendment provides that, due to the greater amount of remediation required, the City will increase the amount of funds that it places in the Environmental Escrow Account to \$200,000. The First Amendment also provides that if the Developer obtains any grants for asbestos abatement or remediation of petroleum contamination that the grant money received will be used, on a prorated basis, to offset the amount of funds that would be used by the Developer from the Environmental Escrow Account.

The proposed Section 5.1 in the First Amendment provides that the City can repurchase the property from the Developer, at the purchase price paid by the Developer, should construction not commence by a certain date. In addition, the Developer would be required to pay \$1,000,000 to the City as liquidated damages as a result of the Developer's failure to proceed with the Project.

The current Section 5.a of the PSA will be changed to reflect revisions of the Developer's project.

The balance of the First Amendment changes the timelines in the current PSA to reflect the revised project development timeline.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a First Amendment to the Purchase and Sale Agreement (the "PSA") between the City of Madison and Hovde Properties LLC, dated December 10, 2012, that will amend the PSA as follows:

1. The amount of the Environmental Escrow Funds as described in Section 2.b. of the PSA is increased from One Hundred Thousand Dollars (\$100,000) to Two Hundred Thousand Dollars (\$200,000). Notwithstanding anything

to the contrary contained in the PSA, the Developer and the City agree that (i) if the Developer obtains a grant or grants (together, the "Grant") to pay for the remediation of any environmental contamination in connection with the Project, (ii) the Grant proceeds can be used to remediate petroleum product contamination ("Petroleum Contamination") and/or to abate asbestos contamination ("Asbestos Contamination") in, on or under the entire Project site, excluding Parcel C but including, without limitation, Parcels A and B, then (iii) Ten Percent (10%) of the amount of the Grant attributable to the remediation of the Petroleum Contamination and Seventy Percent (70%) of the amount of the Grant attributable to the abatement of the Asbestos Contamination shall be used to reimburse the Developer for the costs of such remediation and abatement attributable to Parcels A and B and such amount shall not be drawn upon by the Developer from the Environmental Escrow Funds; provided, however, that to the extent Grant proceeds may not be used for remediation and/or abatement costs attributable to Parcels A and B (the "Prohibited Clean Up Costs" and the "Prohibited Abatement Costs", respectively), no reduction of the amount available to be drawn by the Developer from the Environmental Escrow Funds shall occur with regard to the Prohibited Clean Up Costs and Prohibited Abatement Costs, as the case may be.

2. The date "December 15, 2012" set forth in Section 5.d. of the PSA is hereby amended to read "June 3, 2013".

3. Section 5 a. of the PSA is amended and restated to read as follows:

a. Description. The Developer shall develop the Developer Master Condo Unit as the Project, consisting of approximately 255 residential rental units, approximately 23,000 square feet of retail/commercial/office space, approximately 31,073 square feet of the Fire Admin Condo Unit, and approximately 331 parking stalls.

4. The following sentence in Section 5.f. of the PSA is deleted:

"The Developer shall ensure that the construction of the Fire Admin Condo Unit shall be substantially completed no later than twenty (20) months after the receipt of all required approvals from municipal authorities having jurisdiction; provided, however, that the time period shall be subject to extension as a result of force majeure events.

and is replaced with the following:

"The Developer shall ensure that the construction of the Fire Admin Condo Unit shall be substantially completed by the last day of the fourteenth (14<sup>th</sup>) month following the receipt of all required approvals for the Project from all municipal authorities having jurisdiction, including, without limitation, the building permit for the construction of the Project, but in no event, other than provided in this sentence, shall it be substantially completed later than March 1, 2015, provided, however, that the time period shall be subject to extension as a result of force majeure events."

5. Section 5.i. of the PSA is hereby created to read as follows:

"Notwithstanding anything to the contrary contained herein, in the event the Developer acquires the MFD Property but, prior to commencing demolition of the building or any related improvements located on the MFD Property, determines that it is unable to commence the Project prior to December 31, 2013, the Developer shall notify the City of such circumstance in writing on or prior to December 1, 2013 (the "No Go Notice"). Within sixty (60) days following the City's receipt of the No Go Notice, the City may repurchase the MFD Property from the Developer for the Developer's Purchase Price. The repurchase of the MFD Property shall be on an "as-is, where -is basis", the effect of which shall be to return the parties to substantially the positions they were in had the sale of the MFD Property to the Developer not taken place. The Developer shall clear the MFD property of any and all encumbrances and, if necessary, subdivide the Property to enable the conveyance of the MFD Property prior to the repurchase of the MFD Property by the City. In addition, within thirty (30) days of the date of the No Go Notice, the Developer shall pay to the City the sum of One Million Dollars (\$1,000,000), as fixed, agreed and liquidated damages due to the City as a result of costs and expenses incurred by the City in connection with the PSA and the Developer's failure to proceed with the Project as contemplated herein. This payment shall be the City's sole and exclusive remedy for the Developer's failure to proceed with the Project and related improvements on the MFD Property. Upon the City's receipt of such payment, this Agreement shall terminate. In the event the Developer proceeds with demolition and breaches this Agreement as described in Section 5 f. above, the provisions of that Section shall apply."

6. The following language from the introductory paragraph in Section 8 of the PSA is deleted:

“The Developer shall have one hundred twenty (120) days from the Effective Date (the “Developer’s Contingency Period”) to satisfy or waive the following contingencies or to otherwise terminate this Agreement if any of the Developer’s contingencies cannot be completed despite the Developer’s best efforts.”

and is replaced with the following:

“The Developer shall have until June 28, 2013 (the “Developer’s Contingency Period”) to satisfy or waive the following contingencies or to otherwise terminate this Agreement if any of the Developer’s contingencies cannot be completed despite the Developer’s best efforts.”

7. The following language from the introductory paragraph in Section 9 of the PSA is deleted:

“The City shall have until June 28, 2013 (the “City’s Contingency Period”) to satisfy or waive the following contingencies or to otherwise terminate this Agreement if any of the City’s contingencies cannot be completed despite the City’s best efforts.”

8. The undersigned parties agree that the PSA remains in full force and effect as of the date hereof and the parties agree they shall continue the PSA on the terms contained therein but subject to the modifications and amendments described in this First Amendment.

BE IT FURTHER 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.