



Legislation Text

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Fiscal Note

The City's total costs for acquiring the Property are an estimated \$2,827,618 (including purchase cost of \$2,759,400 (\$14 per sq ft x 197,100 sq ft), \$55,718 for prorated taxes and miscellaneous closing costs, and \$12,500 for a Phase 2 Environmental Assessment). The City is selling the Property for a minimum price of \$2,956,500 (\$15 per sq ft x 197,100 sq ft). The Property will be sold in phases so the exact sale price cannot be determined until all the phases are sold. The City is selling the Initial Phase of the Property for \$739,125 (\$15 per sq ft x 49,000 sq ft). The \$15 per sq foot sale price will escalate at 3% per year for each of the remaining 3 phases until they are sold. The Property is within Tax Incremental Finance District No. 36 Capitol Gateway and the costs to acquire the Property were charged to the TID. Sale proceeds will be credited to the TID.

Title

Accepting a Selection Committee's recommendation of the Urban Land Interests, LLC proposal for the purchase and redevelopment of City-owned properties in the 800 Block of East Washington Avenue and authorizing the execution of a Purchase and Sale Agreement with Urban Land Interests, 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: Gephardt 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 Urban Land Interests, LLC for the purchase and redevelopment of the 800 Block North Site.

NOW THEREFORE BE IT RESOLVED that Common Council accepts the Selection Committee's recommendation of the Urban Land Interests, LLC Proposal, as may be amended through the development review process, for the 800 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 Urban Land Interests, LLC or another entity owned or controlled by Urban Land Interests, LLC or its principals (the "Buyer"), for the purchase and redevelopment of properties owned by the Seller located at 802 and 854 East Washington Avenue in the City of Madison, Wisconsin (collectively the "Property"), as legally described on the attached Exhibit A and shown on the attached Exhibit B, for a mixed-use redevelopment project subject to the following terms and conditions:

1. Properties. 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. The Property will be purchased and developed in the four phases (the "Phases") shown on the attached Exhibit B, comprising:

Phase 1 Property: for retail/office development on the east corner of the Property at East Washington Avenue and North Paterson Street.

Phase 2 Property: for residential apartment development at the north corner of the Property at East Mifflin Street and North Paterson Street.

Phase 3 Property: for structured parking facility at the west corner of the Property at North Livingston Street and East Mifflin Street (the "Parking Structure").

Phase 4 Property: for retail/office development on the south corner of the Property at North Livingston Street and East Washington Avenue.

The Buyer shall determine the sequence and timing of the acquisition and development of the Phases based on market conditions, subject to the Seller's right to delay development of the Phase 2 Property as provided in Section 7 below; provided, however, that the Buyer shall acquire and commence construction, as defined in Section 21 below, on either the Phase 1 Property or the Phase 4 Property (the "Initial Phase Property") prior to or simultaneously with the acquisition or commencement of construction, as defined in Section 21 below, of any of the other Phases of the Property. The components of all Phases shall be limited to those described above.

2. Project. The Buyer shall develop a mixed-use project (the "Project") on the Property consisting of approximately 160,000 square feet of retail/office space (the Phase 1 Property and Phase 4 Property), approximately 79 residential apartment units with approximately 86 parking stalls underneath (the Phase 2 Property), and approximately 400 parking stalls in the Parking Structure (the Phase 3 Property). The Buyer shall use commercially reasonable efforts to target leasing of the office space in the Project to technology-based businesses as defined in the attached Exhibit C.

3. Effective Date. The "Effective Date" shall be the later of: (i) the later date of execution of the Agreement by the Seller or the Buyer, as indicated on the signature page (the "Execution Date"), or (ii) the date pursuant to Section 12 when the Seller and the Buyer have reached an agreement concerning public financing of the Project.

4. Purchase Price. The total purchase price for the Seller's interest in the Property (the "Purchase Price") shall be Fifteen Dollars (\$15.00) per square foot (the "Base Price") multiplied by the number of square feet of the Property in the development Phase as determined in relation to the CSM referenced in Section 16 below. The Base Price for the Initial Phase Property will increase by three percent (3%) upon the extension of the Buyer Contingency Period as provided in Section 13 below. The Base Price for the Phase 2 Property will increase by three (3%) per annum upon each anniversary of the Effective Date

after the expiration of the residential development prohibition as described in Section 7 below until such time as the Buyer closes on the Phase 2 Property. The Base Price for the remaining Phases of the Property will each increase by three percent (3%) per annum upon each anniversary of the Effective Date until such time as the Buyer has acquired all the Property. The Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided.

5. Earnest Money. Within ten (10) days of the Execution Date (as defined in Section 3 above), the Buyer will deposit with the Seller Twenty-Five Thousand Dollars (\$25,000.00) as "Earnest Money," which will be non-refundable except as otherwise provided in the Agreement, which will be applied toward the Purchase Price at the Closing on the Initial Phase Property. Further, the Buyer shall be entitled to one (1) one hundred eighty (180) day extension of the Buyer Contingency Period for the Initial Phase Property, as described in the final paragraph of Section 13 below. Upon the extension of the Buyer Contingency Period under the terms of the Agreement, the Buyer shall deposit with the Seller Twenty-Five Thousand Dollars (\$25,000.00). The deposit to extend the Buyer Contingency Period shall be treated as additional Earnest Money (the "Extension Earnest Money"). If the Agreement is terminated by reason of the failure to satisfy or waive any of the Buyer Contingencies set forth in Section 13 below, or the Public Financing Contingency set forth in Section 12 below, or any failure to satisfy or waive the Seller Contingencies set forth in Section 14 below, the Agreement shall terminate and the Earnest Money paid under the Agreement shall be refunded to the Buyer within ten (10) days after termination. The Buyer shall not be entitled to a refund of the Extension Earnest Money unless the Seller fails to satisfy or waive the Seller Contingencies as provided in Section 14.. Notwithstanding the foregoing, the Extension Earnest Money shall be applied toward the Purchase Price at the Closing of the Initial Phase Property.
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 a Phase of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to such Phase of the Property and has waived or satisfied the "Buyer Contingencies" set forth in Section 13 below with respect to such Phase. 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. Residential Development Restriction. The Seller shall condition the sale or transfer of the Property, or any portion thereof, to prohibit the completion of any residential development on the Property prior to June 1, 2014. For purposes of this condition "completion" shall be defined as the issuance of a certificate of occupancy by the City of Madison for said residential development. Such condition shall expire if the buyer of the City-owned properties located at 741 East Mifflin Street and 754 East Washington Avenue has not commenced construction of its proposed redevelopment project on these properties by July 30, 2012.
8. Environmental Remediation. The Buyer shall be responsible for remediation of environmental contamination on the Property with the exception of remediation that will be funded by a Wisconsin Department of Natural Resources Ready for Reuse grant (Grant #RRG-032) (the "Grant") received by the Seller subject to Paragraph 9 below. The Seller and the Buyer will cooperate in seeking additional Federal, State, County and other funds to apply to the cost of remediation of contamination on the Property not covered by the Grant.
9. Demolition. The Seller shall perform the demolition of all building and improvements on the Property with the exception of impervious asphalt or concrete surfaces that will be left in place at the Buyer's request for the Parking Lot as provided in Section 18 below and/or to maintain a cap for subsurface

conditions prior to the Closing on the Initial Phase Property, except that the Buyer may request that light poles be left in place for the Parking Lot. The Buyer shall be responsible, at its sole expense, to remove any asphalt or concrete surfaces not removed by the Seller and any light poles that it requested to be left in place by the Seller. Funds from the Grant described in Section 8 above will be used by the Seller for the demolition of buildings and improvements on the Property as provided under the Grant with any balance remaining from the Grant, after costs of demolition, to be applied toward eligible environmental remediation costs under the Grant.

10. Billboard Removal. The Seller shall cause the billboard on the Property to be removed from the Property and the billboard rights on the Property to be terminated prior to the Closing on the Initial Phase Property.
11. Delivery of Documents. Within ten (10) days of the Effective Date, the Seller will reproduce at the Seller's expense and send to the Buyer at the Buyer's office copies of all environmental studies, reports, surveys, 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.
12. Public Financing Contingency. The Buyer and the Seller shall have ninety (90) days from the Execution Date (the "Public Financing Contingency Period") to agree upon terms and conditions for any public financing of the Project including, but not limited to, Tax Incremental Financial Assistance and CDA Lease Revenue Bonds. If such terms and conditions are not acceptable to either party, either party, at its sole discretion, may terminate the Agreement by providing written notice to the other party. This contingency may be extended for an additional thirty (30) days by written agreement of the parties prior to the expiration of the Public Financing Contingency Period.
13. Buyer Contingencies. The Buyer shall have three hundred sixty five (365) days from the Effective Date, subject to extension as provided herein (as extended, the "Buyer Contingency Period"), to satisfy or waive the following contingencies to Buyer's obligation to purchase the Initial Phase Property, or to otherwise terminate the Agreement if any contingency is unacceptable, in the Buyer's sole discretion:
 - a. Land Use Approvals. The Buyer securing all land use approvals for the construction of such Phase. Such approvals may include, but not be limited to: approval of a conditional use for the demolition of any structures or improvements (including removal of asphalt and concrete surfaces) not removed by the Seller as provided in Section 9 above, approval by the Urban Design Commission, and all other zoning, building, engineering, traffic and similar approvals and permits necessary to complete such Phase (the "Land Use Contingency").
 - b. Project Financing. The Buyer securing financing acceptable to the Buyer for construction for such Phase. Such funding may include, but not be limited to, Midwest Disaster Area Bonds, New Market Tax Credits, CDA Lease Revenue Bonds and Tax Incremental Financial Assistance (the "Financing Contingency").
 - c. Inspections. The Buyer obtaining various inspections of the Property and agreeing to accept the Property an "as-is" condition. The Buyer, at its sole expense, may obtain an inspection of all buildings and related improvements located on the Property and/or a Phase 1 or 2 environmental assessment of the Property. 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 thereon. In the event the Buyer objects to any matters relating to the condition of the Property and any improvements thereon and the Seller is unwilling to cure the Buyer's objections, the Buyer shall have the right to terminate the Agreement.

- d. Project Lease-Up. The Buyer securing commitments to lease a minimum of seventy-five percent (75%) of the leasable space within the Initial Phase of the Project. Evidence of said commitments shall be letters of intent or executed leases.

If the Seller has not completed its obligations under Sections 8, 9 and 10 above within three hundred sixty five (365) days from the Effective Date, the Buyer Contingency Period shall be extended without payment of additional Earnest Money by the Buyer until the date that is thirty (30) days after written notice by the Seller that such obligations have been completed by the Seller.

The Buyer shall have the right to extend the Buyer's Contingency Period for one (1) one hundred eighty (180) day period (the "Extension"). The Buyer may exercise the Extension if the Buyer has provided to the Seller executed letters of intent or leases to lease a minimum of twenty-five percent (25%) of the leasable space within the first commercial building to be constructed and the Buyer delivers written notice to the Seller extending the same a minimum of thirty (30) days prior to expiration of the original Buyer's Contingency Period. The Buyer's right to the Extension shall follow and be in addition to any extension, as described in the immediately preceding paragraph that results from the Seller's delay in completing its obligations under Sections 8, 9 or 10.

14. Seller Contingencies. The Seller shall have three hundred sixty five (365) days from the Effective Date (the "Seller's Contingency Period") to satisfy or waive the following contingencies to the Seller's obligation to sell the Initial Phase Property or to otherwise terminate the Agreement, unless extended as provided herein:

- a. Capital Budget Authorization. The Seller obtaining funding authorization from the Common Council of the City of Madison for any TIF financial assistance, consistent with the terms of the agreement under Section 12 above.
- b. CDA Bonds. If required for project financing, the Seller requesting that the City of Madison's Community Development Authority issue lease revenue bonds, consistent with the terms of the agreement under Section 12 above.

The Seller's Contingency Period may be extended for an additional ninety (90) days by written agreement of the parties prior to expiration of the Seller's Contingency Period.

15. Survey. The Seller shall provide to the Buyer, at the Seller's expense, within sixty (60) days of the Effective Date, an ALTA/ACSM Land Title Survey of the Property that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2011 in order to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of the Buyer and title company providing the title insurance described in Section 20.
16. Certified Survey Map. The Seller shall, at its cost, secure approval of a certified survey map that will create four (4) lots on the Property that will generally conform with the boundaries of the Phase as shown on the attached Exhibit B which will be recorded prior to the Closing for the Initial Phase Property.
17. Access to Property. The Buyer and the Buyer's authorized agents and contractors shall be permitted access to the Property for the purpose of conducting 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.

18. Surface Parking Lot. Upon the Buyer's request, commencing on or after the completion of the development on the Initial Phase Property, either the unsold Phase 1 or 4 Property will be leased by the Seller to the Buyer for the operation of a temporary surface parking lot (the "Parking Lot") for the tenants, employees and visitors of the Initial Phase Development subject to approval by the Plan Commission and Urban Design Commission. The Buyer shall pay as rent on an annual basis the greater of: Twenty-five Thousand Dollars (\$25,000) which shall escalate three per cent (3%) on each anniversary of the effective date of the lease; or, an amount equal to the net operating income (the "NOI") that the Buyer realizes from the operation of the Parking Lot. The NOI shall be equal to the gross parking income from the Parking Lot minus all operating expenses (including a reasonable allocation of the Buyer's personnel costs attributed to the operation of the Parking Lot) and any amortization of the Buyer's cost to improve the Parking Lot. Monthly parking rates for the Parking Lot shall be those established in the leases for the tenants of the development on the Initial Phase Property but shall not be less than Forty Dollars (\$40) per stall per month. Contractors working on the Project shall be permitted to park in the Parking Lot without charge. The lease shall terminate upon completion of the construction of the Parking Structure.
19. General Public Parking. Subject to its obligation to provide parking for the commercial tenants on the Phase 1 Property and the Phase 4 Property, the Buyer shall cooperate with the Seller to make the Parking Structure and the Parking Lot available, at no cost, for general public parking, outside of Business Hours, as defined herein, or at such other times as the parties may agree, during events at Breese Stevens Field. Business hours are defined as the hours between 8:00 a.m. and 5:00 p.m. Monday through Friday (excluding holidays).
20. Title Insurance. The Seller shall provide to the Buyer at the Seller's expense within fourteen (14) days of the Effective Date a commitment from a title insurance company licensed in Wisconsin to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents. 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 standard title insurance exceptions acceptable to the Buyer. The Buyer shall notify the Seller of any valid objection to title, in writing, prior to the end of the Buyer's Contingency Period. 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. The Buyer shall not be entitled to a return of the Extension Earnest Money. At closing, the Seller shall also cause the title insurance company to issue a gap endorsement.
21. Option Agreement. At Closing, the Seller and the Buyer shall execute an Option Agreement that will provide that: a. if the Buyer has closed on the Initial Phase Property but has not commenced construction on the Initial Phase Property within three hundred sixty-five (365) days from such Closing Date (the "Initial Phase Deadline") then the Seller shall have the option (the "Initial Phase Option") to buy all such Property in "as is" condition from the Buyer at the Purchase Price plus the environmental remediation costs incurred by the Buyer for such property with the exception that any environmental remediation necessitated by the acts or omissions of the Buyer, its contractors, subcontractors or agents shall be the responsibility of the Buyer, at its sole cost, and b., that if the Buyer has closed on the Phase 3 Property and/or the Final Phase Property but has not commenced construction on either property within three hundred sixty five (365) days from such closing date (the "Final Phase Deadline") then the Seller shall have the option (the "Final Phase Option") to buy both the Phase 3 Property and the Final Phase Property in "as is" condition from the Buyer at the Purchase Price plus the environmental remediation costs incurred by the Buyer for such property with the exception that any environmental remediation necessitated by the acts or omissions of the Buyer, its contractors, subcontractors or agents

shall be the responsibility of the Buyer, at its sole cost. "Commenced construction," "commence construction" or "commencement of construction" shall be defined as commencement of excavation for the foundation of the applicable phase of the Project. If the Buyer fails to commence construction on or before either the Initial Phase Deadline or the Final Phase Deadline, the Seller shall give the Buyer written notice thereof and the Buyer shall have sixty (60) days from receipt of such notice (the "Cure Period") within which to commence construction and cure such default. If after the Cure Period the Buyer has not commenced construction, the Seller shall have a period of sixty (60) days after expiration of the Cure Period to exercise the option as provided in the Option Agreement. In the event the Seller exercises the Initial Phase Option as herein provided the Agreement shall terminate at the closing of the Seller's purchase of the Initial Phase Property. In the event that the Seller exercises the Final Phase Option as herein provided, the Agreement shall terminate at Closing provided that the Buyer shall have the right to continue to lease the Parking Lot to support its Initial Phase commercial office development until such time as the Parking Structure is constructed on the Phase 3 Property. The Parking Structure shall provide, subject to compliance with zoning and Plan Commission approval, 3.0 spaces per one thousand (1,000) rentable square feet in the Initial Phase commercial office development that will be leased to the Buyer at an unreserved parking rate of Forty Dollars (\$40.00) per stall per month (as adjusted by changes in the Consumer Price Index from the date of completion of the development on the Initial Phase Property).

22. Closing. The Buyer will provide written notice to the Seller of the Buyer's intent to purchase a particular Phase or Phases (the "Phase Notice") for those Phase(s) that the Buyer elects to purchase, as follows: (i) the Phase Notice for the Initial Phase Property shall be given within three hundred and sixty five (365) days following the Effective Date, subject to an extension of the Buyer's Contingency Period as provided in Section 13 above, (ii) the Phase Notice for the Phase 2 Property shall be given within three hundred and sixty five (365) days following the Closing Date of the Initial Phase Property (the "Phase 2 Notice Deadline"), (iii) the Phase Notice for the Phase 3 Property shall be given within three hundred and sixty five (365) days following completion of the commercial building on the Initial Phase Property purchased (the "Phase 3 Notice Deadline"), and (iv) the Phase Notice for the final Phase of the Property shall be given within five (5) years of the Effective Date (the "Final Phase Notice Deadline").
- a. Closing for each Phase of the Property shall occur within thirty (30) days after the Buyer's delivery of the Phase Notice applicable to such Phase, 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.
 - b. The Seller agrees to execute and deliver to the Buyer at closing the Deed conveying the applicable Phase of the Property to the Buyer (or, in the case of the Phase 3 Property, the Seller or its assignee, if applicable), free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and agreements entered under them; recorded easements for the distribution of utility and municipal services; and recorded building and use restrictions and covenants.
 - c. 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 applicable Phase of the Property to be in the condition called for by the Agreement.
 - d. All real estate taxes with respect to the applicable Phase of the Property shall be prorated between the Buyer and the Seller as of the date of closing based upon the latest known assessment and latest known mil rate.
 - e. The Seller shall be responsible for any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the

Property as of the date of closing.

- f. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with conveyance of the Property.
- g. The Buyer and the Seller shall each pay one-half of any closing escrow fees charged by the title insurance company to facilitate closing. All other closing costs shall be prorated between the Buyer and the Seller as is customary for commercial real estate transactions in the City of Madison, Wisconsin.

BE IT STILL FURTHER 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.

BE IT FINALLY RESOLVED that should the Agreement be terminated by either party as provided therein that the Economic Development Division shall be authorized to issue a Request for Proposals seeking developer interest in the purchase and redevelopment of the Property.