



Legislation Text

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Fiscal Note

The proposed resolution authorizes the City's purchase of two commercial parcels for land banking purposes. The estimated acquisition cost for the property is \$940,000 plus another \$40,000 for an environmental site assessment, title work, and miscellaneous closing costs. Additionally, an estimated \$20,000 for property holding costs and \$200,000 for demolition costs will be needed, bringing the total to approximately \$1.2 million. The property purchase, holding costs, and demolition costs will be entirely funded by the Economic Development Division's Land Banking capital program, which has approximately \$4.2 million in available budget authority.

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Lutz Properties, LLC, for the City's acquisition of the property located at 814 North Avenue and 826 North Avenue for land banking purposes. (14th AD)

Body

WHEREAS, Lutz Properties, LLC (the "Seller") is the owner of two adjacent parcels of property, with one parcel being located at 814 North Avenue containing 38,127 square feet of land and 8,200 square feet of commercial warehouse space, and the second parcel being located at 826 North Avenue containing 24,510 square feet of vacant commercial land, both as legally described on Exhibit A and depicted on Exhibit B, attached hereto (collectively, the "Property"); and

WHEREAS, the City of Madison (the "City") desires to purchase the Property for land banking purposes that are being contemplated in the updated South Madison Plan; and

WHEREAS, the Mayor directed City Real Estate staff to pursue the purchase of suitable properties in the South Park Street corridor; and

WHEREAS, the City's acquisition of the Property would provide expanded opportunities for the City to guide future housing and commercial development; and

WHEREAS, the Seller agrees, in accordance with an executed Purchase and Sale Agreement (the "Agreement"), to sell the Property to the City for a purchase price of \$940,000, which was negotiated based on an appraisal approved by the City's Office of Real Estate Services; and,

WHEREAS, additional acquisition costs, including an environmental site assessment, title work, and miscellaneous closing costs are estimated to total \$40,000; and,

WHEREAS, following the City's acquisition of the property, 2021 estimated holding costs of \$20,000 and building demolition costs of \$200,000 are anticipated.

NOW, THEREFORE, BE IT RESOLVED that the City's Common Council hereby authorizes the City's execution, as Buyer, of the Agreement with the Seller for the purchase of the Property, subject to the following terms and conditions:

1. The Property. The Buyer shall purchase and the Seller shall sell and convey by Warranty Deed (the "Deed") fee simple title to the real property located at 814 North Avenue and 826 North Avenue, together

with all improvements located thereon, legally described on Exhibit A and depicted on Exhibit B (collectively, the "Property").

2. Effective Date. The "Effective Date" shall be the date the City executes the Agreement.
3. Purchase Price. The total purchase price of the Seller's interest in the Property (the "Purchase Price") shall be Nine Hundred Forty Thousand Dollars and 00/100 (\$940,000.00). The Purchase Price shall be payable in cash at Closing, as defined herein, subject to the adjustments and prorations herein provided.
4. Earnest Money. Within ten (10) business days of the Effective Date, the Buyer shall deposit with the Title Company, as defined below, Fifty Thousand Dollars and 00/100 (\$50,000.00) as "Earnest Money", which will be non-refundable except that the Earnest Money shall be forfeited and returned to the Buyer as provided in Paragraphs 8 or 10, or if Seller defaults on the terms of this Agreement. The Earnest Money shall be applied toward the Purchase Price at Closing in accordance with Paragraph 3.
5. Personal Property. The transaction contemplated by this Agreement does not include any personal property.
6. Delivery of Documents. Within fifteen (15) days of the date the Seller executes this Agreement, and throughout the Due Diligence Period described in Paragraph 8, the Seller will reproduce at the Seller's expense and send to the Buyer all environmental studies, reports, surveys, permits, applications, building inspections, and remediation plans or assessments of the Property; all studies, reports, plans or assessments related to the condition of the Property and improvements in the Seller's possession or control; and any leases related to the Property, or any portion thereof, that are anticipated to be in effect after the date of Closing, as defined herein.
7. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided in this Agreement, 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, its agents or employees, in entering into this Agreement or in closing the transaction described herein. Except as provided in Paragraph 10 below, 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.
8. Due Diligence Period. The Buyer shall have one hundred twenty (120) days from the Effective Date (the "Due Diligence Period") to review, test and inspect all aspects of the Property, at its sole cost and expense. If within the Due Diligence Period the Buyer determines, in its sole discretion, that it does not desire to purchase the Property, the Buyer may provide written notice to the Seller of such desire and this Agreement shall terminate immediately and the Earnest Money shall be promptly refunded by the Title Company to the Buyer.
 - a. Inspections and Testing. The Buyer, at its sole expense, has the option to conduct various inspections and testing on the Property and any improvements located thereon, including asbestos testing, a Phase 1 or 2 Environmental Site Assessment report ("ESA") and related testing, soils and groundwater testing and any other inspections or testing deemed necessary by the Buyer. In the event Buyer's Phase 1 ESA recommends a Phase 2 ESA, the Buyer may notify Seller in writing of its desire to extend the Due Diligence Period by up to 60 days, if necessary to conduct such investigation. The Due Diligence period may then be extended as mutually agreed to by the Buyer and Seller (the "Parties"). If the Parties are unable to agree on an extension of the Due Diligence Period, the Buyer may declare this Agreement null and void by providing notice as set forth in the "Notices" paragraph of the Agreement. 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.

- b. City Budget Authorization. The Buyer shall obtain budget authorization from the Common Council of the City of Madison for the purchase of the Property.

If the Buyer does not provide written notice terminating this Agreement on or prior to the one hundred twentieth (120th) day of the Due Diligence Period, this Agreement shall remain in full force and effect, the Buyer shall accept the Property as-is, and the Parties shall proceed to close the transaction as provided herein.

Should the Buyer desire to close prior to the end of the Due Diligence Period, the Buyer may provide the Seller with written notice of its intent to do so. The provision of such notice by the Buyer shall not affect the terms contemplated in this Agreement, except that the Closing shall occur on or before fifteen (15) days from the date the Seller receives such notice, unless the Parties agree in writing to another date.

The Due Diligence Period may be extended upon written agreement of the Parties.

9. Access to the Property. The Buyer and the Buyer's authorized agents, contractors, and engineers shall be permitted access to the Property for the purpose of conducting inspections and testing as provided in Paragraph 8, at reasonable times with at least twenty-four (24) hour advance notice to the Seller. The Buyer shall repair, at the Buyer's sole cost and expense, all damages caused by any of its assessments and inspections so that the condition of the Property is returned to as good or better condition as existed prior to the assessment(s) and inspections.

10. 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 (the "Title 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 this 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. 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 this Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, this Agreement shall be void and the Earnest Money shall be promptly refunded by the Title Company to the Buyer.

11. Survey. Any survey of the Property including, but not limited to, an ALTA/ACSM Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2016 that is required to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of the Buyer and the Title Company providing the title insurance described in Paragraph 10 shall be at the sole cost and expense of the Buyer.

12. Closing.

- a. Closing shall occur on or before fifteen (15) days from (a) the expiration of the Due Diligence Period; or (b) the date of the Seller's receipt of notice from the Buyer requesting an earlier date of Closing; or (c) such other date agreed to in writing by the Parties, at the office of the Title Company issuing the commitment for title insurance, unless the Parties agree in writing to an alternate Closing location.

- b. The Seller agrees to execute and deliver to the Buyer at closing the Deed conveying the

Property to the Buyer 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, municipal services; easements; 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 Property to be in the condition called for by this Agreement.
- d. Real estate taxes applicable to the Property in the year of Closing shall be prorated between the Buyer and the Seller as of the date of Closing based upon the latest known assessment and latest known mill rate.
- e. The Seller shall be responsible for the payment of any existing special or area assessments, sewer 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 fees related to the Wisconsin Real Estate Transfer fee.
- g. The Seller or Title Company shall prepare and deliver at Closing the Wisconsin Transfer Return due in connection with conveyance of the Property.
- h. All costs charged by the Title Company to facilitate Closing shall be prorated between the Parties.
- i. Seller shall assign all current leases to the Buyer as of the Closing. Any service contract shall be terminated unless Buyer agrees to an assignment of the service contract.

BE IT FURTHER RESOLVED that a total of \$1,200,000 from the Land Banking Fund shall be spent as follows: \$940,000 for the purchase of the Property, \$40,000 for due diligence and closing expenses to accomplish the purchase of the Property, \$20,000 for holding costs, and \$200,000 for demolition costs; and,

BE IT FURTHER RESOLVED that the Economic Development Division reserves the right to replenish the City's Land Banking Fund with funds from TID 42; and,

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to sign, accept, and record any and all documents and legal instruments required to complete the transactions contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney.