



Legislation Text

File #: 25056, **Version:** 1

Fiscal Note

The City's total costs for acquiring the Property are an estimated \$1,268,891 (including purchase costs of \$1,224,580 (\$14 per sq ft x 87,470 sq ft), \$34,311 for prorated taxes and miscellaneous closing costs, and \$10,000 for a Phase 2 Environmental Assessment). The City is selling the property for \$1,312,050 (\$15 per sq ft x 87,470 sq ft). The Property is within Tax Incremental Financing 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 Rifken Group, LTD 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 The Rifken Group, LTD and Irgens Development Partners, 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: Gebhardt Development, LLC Proposal
- 800 Block North Site: Urban Land Interest, LLC Proposal
- 800 Block South Site: The Rifken Group, LTD Proposal; and,

WHEREAS, City staff have negotiated the terms and conditions of a Purchase and Sale Agreement with The Rifken Group, LTD. and Irgens Development Partners, LLC for the purchase and redevelopment of the 800 Block South Site, as set forth in a Letter of Intent dated January 10, 2012 ("LOI").

NOW THEREFORE BE IT RESOLVED that Common Council accepts the Selection Committee's recommendation of The Rifken Group, LTD Proposal, as may be amended through the development review process, for the 800 Block South 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 The Rifken Group, LTD ("Rifken")

and the Irgens Development Partners, LLC (“Irgens”) or a special purpose entity formed and directly or indirectly managed by the principals of Rifken and Irgens (the “Buyer”), for the purchase and redevelopment of properties owned by the Seller located in Block 144 of the Original Plat of the City of Madison East, Wisconsin (collectively the “Property”), as legally described below and shown on the attached exhibit, 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.
2. Project. The Buyer shall develop a mixed-use project (the “Project”) on the Property consisting of a minimum five story building along East Washington Avenue with approximately 100,000 square feet of retail/commercial/office space (the “Building”) and approximately 400 parking stalls in a structured parking facility (the “Parking Structure”).
3. Effective Date. The “Effective Date” shall be the later date of execution of the Agreement by the Seller or the Buyer, as indicated on the signature page.
4. Purchase Price. The total purchase price for the Seller’s interest in the Property (the “Purchase Price”) shall be One Million Three Hundred Twelve Thousand Fifty and 00/00 Dollars (\$1,312,050.00) (\$15.00 per square foot multiplied by the number of square feet (87,470) of the Property as determined by the ALTA Survey to be provided by the Seller in accordance with Paragraph 12. 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 Effective Date, the Buyer will deposit with the Seller Thirteen Thousand Dollars (\$13,000.00) as “Earnest Money,” which will be non-refundable subject to the contingencies in the Agreement, which will be applied toward the Purchase Price at Closing. Further, the Buyer shall be entitled to three (3) one hundred eighty (180) day extensions of the Buyer Contingency Period. Upon the extension of the Buyer Contingency Period under the terms of the Agreement, Buyer shall deposit with the Seller Ten Thousand Dollars (\$10,000.00) for the first such extension, Twenty Thousand Dollars (\$20,000.00) for the second such extension, and Thirty Thousand Dollars (\$30,000.00) for the third such extension. Each deposit to extend the Buyer Contingency Period shall be treated as additional Earnest Money (individually and collectively “Extension Earnest Money”). The Extension Earnest Money shall be deposited with the Seller prior to the beginning of each extension period. If the Agreement is terminated by reason of the failure to satisfy or waive any of the Buyer Contingencies set forth in Section 10, below, or any failure to satisfy or waive the Seller Contingencies set forth in Section 11, 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. Except in the case of a Seller default, the Extension Earnest Money shall not be refundable. Notwithstanding the foregoing, the Extension Earnest Money shall be applied toward the Purchase Price at Closing.
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 the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the “Buyer Contingencies” set forth in Paragraph 10 below. 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. Demolition. The Buyer shall be responsible for the demolition of all buildings and improvements (including removal of asphalt and concrete surfaces) on the Property. The Seller will cooperate with the

Buyer in seeking federal, State, County and other funds available to apply to the cost of demolition.

8. Environmental Remediation. The Buyer shall be responsible for all remediation of environmental contamination on the Property. The Seller will cooperate with the Buyer in seeking federal, State, County and other funds to apply to the cost of remediation. The Seller agrees to reimburse the Buyer for a Phase 2 environmental assessment to be performed by the Buyer's qualified environmental contractor, but not to exceed Ten Thousand Dollars (\$10,000). Reimbursement shall be paid by the Seller to the Buyer following completion of the Phase 2 environmental assessment. The Buyer will provide copies of the Phase 2 environmental assessment report and all related invoices to the Seller prior to reimbursement.
9. 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.
10. Buyer Contingencies. The Buyer shall have three hundred and sixty five (365) days from the Effective Date (the "Buyer's Contingency Period"), unless extended as provided herein, to satisfy or waive the following contingencies or to otherwise terminate the Agreement if any of the Buyer's Contingencies are unacceptable, in the Buyer's sole discretion,
 - i. Land Use Approvals. The Buyer securing all land use approvals for the construction of the Project. Such approvals may include, but not be limited to: approval of a conditional use for the demolition of existing structures, approval by the Urban Design Commission, and all other zoning, building, engineering, traffic and similar approvals and permits necessary to complete the Project.
 - ii. Project Financing. The Buyer securing financing acceptable to the Buyer for the construction of the Project. 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.
 - iii. CSM. The Buyer securing approval of a certified survey map for the Property.
 - iv. Inspections. The Buyer obtaining various inspections of the Property and agreeing to accept the Property in an "as-is" condition. The Buyer, at its sole expense, except for the Seller reimbursement as provided in Paragraph 8, 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.
 - v. Purchase Agreements. The Buyer securing options or purchase and sale agreements to purchase properties located at 824-825 East Washington Avenue and 824 East Main Street required for the construction of the Project.
 - vi. Parking Structure. The Buyer and Seller negotiating terms and securing

approvals for an agreement for the Seller's financing of the Parking Structure and a management agreement or lease to the Buyer for the use, operation and maintenance of the Parking Structure by the Buyer and the Buyer's tenants. The ownership of the Parking Structure will transfer to the Building owner upon full payment of any TIF loans and/or complete amortization of any CDA Lease Revenue Bonds used to finance the construction of the Parking Structure.

- vii. No Historic Preservation Restrictions. The Buyer confirming that there are no landmark or historic preservation restrictions existing or proposed affecting all or any portion of the Property.
- viii. Utility Easements. The Buyer reviewing and approving all easements, restrictions, covenants and agreements affecting the Property, including the Madison Gas and Electric easement at the southwest corner of the Property and any overhead or underground utilities whether or not covered by an easement. The Seller will provide to the Buyer within fourteen (14) days of the Effective Date, copies of all such easements, restrictions, covenants and agreements encumbering the Property in the Seller's possession or control.
- ix. Median Break. The Buyer securing approval from the Seller of a full Median Break at the intersection of East Washington Avenue and Livingston Street that will be constructed by the Seller at its sole cost.
- x. Project Lease-Up. The Buyer securing commitments to lease a minimum of 75% of the leasable space within the Project. Evidence of said commitments shall be letters of intent or executed leases.

The Buyer shall have the right to extend the Buyer's Contingency Period for three (3) one hundred eighty (180) day periods (individually an "Extension" and collectively the "Extensions"). The Buyer may exercise the first 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 Project 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 may exercise the second Extension if the Buyer has provided to the Seller executed letters of intent or leases to lease a minimum of forty percent (40%) of the leasable space within the Project and the Buyer delivers written notice to Seller extending same a minimum of thirty (30) days prior to expiration of the first Extension of the Buyer's Contingency Period. The Buyer may exercise the third Extension if the Buyer has provided to the Seller executed letters of intent or leases to lease minimum of forty percent (40%) of the leasable space within the Project and the Buyer delivers written notice to the Seller extending same a minimum of thirty (30) days prior to expiration of the second Extension of the Buyer's Contingency Period.

- 11. 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 or to otherwise terminate the Agreement, unless extended as provided herein:
 - a. Redevelopment District Boundary Amendment. If required for the Buyer to receive Midwest Disaster Area Bonds or CDA Lease Revenue Bonds, the Seller requesting that the City of Madison's Community Development Authority amend the current boundaries of the 800 Block East Washington Redevelopment District or create a new redevelopment district to include the Property.
 - b. Capital Budget Authorization. The Seller obtaining funding authorization from the Common Council of the City of Madison for any TIF financial assistance.

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 original Seller's Contingency Period.

12. 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 Paragraph 15.
13. 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.
14. General Public Parking. Except as provided herein, parking in the Parking Structure shall be restricted to the tenants, employees, customers and visitors of the Building. Rental of parking stalls in the Parking Structure to the general public shall be prohibited during the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday (excluding holidays) ("Business Hours"). Notwithstanding the foregoing, the Building owner may lease parking stalls to tenants of the Building and their employees during Business Hours.

Further, on holidays and upon request by the Seller for certain special events, the Building owner shall make available up to thirty percent (30%) of the parking stalls in the Parking Structure for general public parking, at no cost, between the hours of 6:00 p.m. and 10:00 p.m. on weekdays and 8:00 a.m. and 10:00 p.m. on weekends, or at such other times as may be agreed to in writing by the parties.

15. 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.
16. Option Agreement. At Closing, the Seller and the Buyer shall execute an Option Agreement that will provide that if the Buyer has not commenced construction of the Project within three hundred sixty-five (365) days from the Closing Date (the "Deadline") that the Seller shall have the option to buy the Property from the Buyer at the Purchase Price subject, however, to delays caused by Force Majeure events, in which events the Buyer shall be granted a day-for-day extension of the Deadline for the duration of the delay caused directly or indirectly by any such Force Majeure event. "Force Majeure" shall be defined as any events, actions or omissions which are outside of the reasonable control of the Buyer including, but not limited to: severe weather or natural disasters; Acts of God or war; lawsuits or other actions commenced by third parties that delay, stop or materially modify the Project; strikes,

lockouts, picketing (legal or illegal) or riots; fire or other casualty; accidents; unavailability of fuel, power, supplies or materials; the passage or application or limitation of any law, regulation, ordinance or order by any government authority which has the effect of preventing commencement of construction; delays in deliveries; or delays caused by the action or omission of the Seller. "Commenced construction," "commence construction" or "commencement of construction" shall be defined as commencement of excavation for the foundation of the Project. If the Buyer fails to commence construction on or before the Deadline, as may be extended due to Force Majeure events as provided herein, 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, as may be extended due to Force Majeure events as provided herein, 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.

17. Closing.

- a. Closing shall occur within thirty (30) days after the waiver or satisfaction of the contingencies listed in Paragraphs 10 and 11, 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 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 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 Property to be in the condition called for by the Agreement.
- d. All real estate taxes with respect to 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 FINALLY 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.

THE PROPERTY LEGAL DESCRIPTIONS

801 E Washington Ave.
251-0709-134-1007-6

Lot 1 and the Southwest 34 feet of Lot 2, Block 144, Original Plat, City of Madison, Dane County, Wisconsin

815 E Washington Ave.

251-0709-134-1006-8

Lots 3 and 16, and the Northerly 32 feet of Lots 2 and 17, Block 144, Original Plat, City of Madison, Dane County, Wisconsin

819 E Washington Ave.

251-0709-134-1005-0

Lot 4, Block 144, Original Plat, City of Madison, Dane County, Wisconsin

806 E Main St.

251-0709-134-1008-4

Lot 18 and the Southwesterly 34 feet of Lot 17, Block 144, Original Plat, City of Madison, Dane County, Wisconsin

820 E Main St.

251-0709-134-1009-2

Lot 15, Block 144, Original Plat, City of Madison, Dane County, Wisconsin