



## Legislation Text

File #: 34278, Version: 1

### Fiscal Note

The total acquisition costs are estimated to be \$200,000 broken out as follows: \$150,000 for the purchase price of the Real Estate, \$10,000 miscellaneous closing costs (prorated taxes), \$15,000 for expenses associated with the Buyer's Contingencies (appraisal, environmental assessments) and \$25,000 for the demolition of the improvements on the Real Estate. Funds are available in Account No. CS53-58110-810571-00-53W0472.

### Title

Authorizing the acceptance of an Offer to Sell Real Estate Agreement for the purchase of property located at 6503 Cottage Grove Road, Madison, Wisconsin.

### Body

The City of Madison has received an Offer to Sell Real Estate (the "Offer") from James R. Kern the "Owner" of the property located at 6503 Cottage Grove Road (the "Real Estate"). The Real Estate is located in the southeast quadrant of the Cottage Grove Road/Sprecher Road intersection. Cottage Grove Road is tentatively scheduled to be reconstructed by the City in 2018. While the City will use its best efforts to avoid or minimize the impacts of the reconstruction project on the Real Estate some challenges with access and construction would remain given the proximity of the house located on the Real Estate to the project. While an acquisition of the Real Estate may not be absolutely necessary for the project, City Engineering feels that there are safety and construction benefits associated with the acquisition. Acquisition will allow the removal all driveway access at the intersection and enable the City to grade onto the Real Estate. The small house on the Real Estate would be razed. The Owner has stated that the scheduled project is impacting his ability to sell the Real Estate. To this end he made the City the Offer to sell the Real Estate. City Engineering is recommending that the City accepts the Offer.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the acceptance of an Offer to Sell Real Estate (the "Offer") between the City (the "Buyer") and James R. Kern (the "Seller") for the purchase of a property owned by the Seller located at 6503 Cottage Grove Road, Madison, Wisconsin (the "Real Estate"), legally described in Exhibit A below and depicted on the attached Exhibit B, on the following terms and conditions:

1. Description. The Buyer shall purchase and the Seller shall sell and convey by Warranty Deed fee simple interest of the Real Estate including all improvements and fixtures located thereon and all appurtenances thereto.

As used herein, the term "fixture" shall be defined as follows:

A fixture is an item of property which is physically attached to or so closely associated with land or buildings so as to be treated as part of the Real Estate, including, without limitation, physically attached items not easily removable without damage to the premises, items specifically adapted to the premises, and items customarily treated as fixtures including but not limited to all: garden bulbs; plants; shrubs and trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units and attached equipment; water heaters and softeners; sump pumps; attached or fitted floor coverings; awnings; attached antennas, satellite dishes, and component parts; garage door openers and remote controls; installed security systems; central vacuum systems, and accessories; in-ground sprinkler systems, and component parts; built-in appliances; ceiling fans;

fences; storage buildings on permanent foundations, and docks/piers on permanent foundations.

Notwithstanding the foregoing, the Seller shall have the right to remove the following fixtures: the Montigo gas fire place, the laundry sink, the forced air furnace, the central air conditioner, the water softener, the well pressure tank and the wooden fence along County Trunk Highway BB. The removal of said fixtures shall be at the Seller's expense and shall occur prior to Closing. The Seller shall ensure that all utilities to the fixtures shall be shut off prior to removal and that the Real Estate shall be left in a safe condition upon removal of the fixtures.

2. Effective Date. The "Effective Date" shall be the later date of execution of the Offer by the Buyer or the Seller, as indicated on the signature page.
3. Purchase Price. The total purchase price of the Seller's interest in the Real Estate shall be One Hundred Fifty Thousand Dollars (\$150,000), payable in cash at closing, subject to the adjustments and prorations herein provided.
4. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided herein, the Buyer shall purchase the Real Estate 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 the Offer or in closing the transaction described herein. Except as provided below, the Buyer's closing on the acquisition of the Real Estate shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Real Estate and has waived or satisfied the Buyer's Contingencies, as described in Paragraph 5 below.
5. Buyer Contingencies. The Buyer shall have ninety days (90) days from the Effective Date (the "Buyer's Contingency Period") to satisfy or waive the following contingencies (the "Buyer's Contingencies") or to otherwise terminate the Offer if any of the Buyer's Contingencies are unacceptable, in the Buyer's sole discretion.
  - a. Inspections and Testing. The Buyer obtaining various inspections and testing of the Real Estate and any improvements located thereon. The Buyer, at its sole expense, may obtain an inspection of any buildings and related improvements located on the Real Estate, a Phase 1 or 2 environmental site assessment of the Real Estate and related testing, soils testing and any other inspections or testing deemed necessary by the Buyer. In no event shall the Seller be required to cure any matter to which the Buyer objects relating to the condition of the Real Estate or any improvements located thereon.
  - b. Appraisal. The Buyer obtaining, at its sole cost, an appraisal that supports the Purchase Price.

The Buyer's Contingency Period may be extended for an additional thirty (30) days by written notice from the Buyer to the Seller delivered prior to the expiration of the Buyer's Contingency Period.

6. Access to Property. The Buyer and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors shall be permitted access to the Real Estate for the purpose of conducting the inspections and testing anticipated by the Buyer's Contingencies including, but not limited to, a Phase 1 or 2 environmental assessment of the Real Estate and/or a physical inspection of the Real Estate and any building and related improvements located on the Real Estate at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer's access to, and inspection of, the Real Estate shall be at Buyer's sole risk and expense and Seller shall have no responsibility therefor. The Buyer will repair, at the Buyer's cost, all damages caused by its inspections or testing so that the condition of the Real Estate is returned to as good or better condition as existed prior to the inspections or testing.

7. 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 title insurance 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 proof is provided to the Buyer, to be in the condition called for in the Offer, 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 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 the Offer by reason of a valid legal defect in title which the Buyer is unwilling to waive, the Offer shall be void.
8. Condition of Property. The Seller represents and warrants to the Buyer that as of the date of the Offer the Seller has no notice or knowledge of conditions affecting the Real Estate or transaction such as:
- a. Planned or commenced public improvements which may result in special assessments or otherwise materially affect the Real Estate or present use of the Real Estate;
  - b. Government agency or court order requiring repair, alteration, or correction of any existing condition;
  - c. Structural inadequacies which if not repaired will significantly shorten the expected normal life of the Real Estate;
  - d. Mechanical systems inadequate for the present use of the Real Estate;
  - e. Conditions constituting a significant health or safety hazard for occupants of the Real Estate;
  - f. Insect or animal infestation of the Real Estate;
  - g. Underground storage tanks on the Real Estate for storage of flammable or combustible liquids including, but not limited to, gasoline and heating oil, or the presence of any dangerous or toxic materials or conditions in or affecting the Real Estate;
  - h. Any portion of the Real Estate being in a 100-year flood plain, a wetland, or a shoreland zoning area under local, state, or federal regulations;
  - i. Completed or pending reassessment of the Real Estate for property tax purposes;
  - j. Material violations of environmental rules or other rules or agreements regulating the use of the Real Estate;
  - k. Construction or remodeling on the Real Estate for which required state or local permits had not been obtained;
  - l. Any land division involving the subject the Real Estate, for which required state or local approvals had not be obtained;
  - m. Material violation of applicable state or local smoke detector laws;
  - n. High voltage electric (100KV or greater) or steel natural gas transmission lines located on, but not directly serving the Real Estate;

- o. That a structure on the Real Estate is designated as a historic building or that any part of the Real Estate is in a historic district;
  - p. Other conditions or occurrences which would significantly reduce the value of the Real Estate to a reasonable person with knowledge of the nature and scope of the condition or occurrence;
- 9. Personal Property. The transaction contemplated by the Offer does not include any personal property.
- 10. Leasing. The Seller represents that the Real Estate is not leased or occupied by any person other than the Seller, and the Seller agrees that it shall not enter into any lease or rental agreement for the Real Estate, or any portion thereof, or allow the occupation of the Real Estate other than by the Seller during the Buyer's Contingency Period and through the date of closing, without the prior written consent of the Buyer.
- 11. Commissions. The Seller represents that he has not entered into any contracts with any brokers or finders nor has the Seller obligated himself to pay any real estate commissions or finders' fees on account of the execution of the Offer or the close of the transaction contemplated hereby. The Buyer represents that it has not entered into any contracts with any brokers or finders nor has the Buyer obligated itself to pay any real estate commissions or finders' fees on account of the execution of the Offer or the close of the transaction contemplated hereby. The provisions of this Paragraph 11 shall survive any expiration or termination of the Offer and shall not merge into any deed delivered and accepted upon the closing of the transaction herein contemplated.
- 12. Closing.
  - a. This transaction shall occur within thirty (30) days after the waiver or satisfaction of the Buyer's Contingencies listed in Paragraph 5 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 a Warranty Deed conveying the Real Estate 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, recorded building and use restrictions and covenants.
  - c. All real estate taxes with respect to the Real Estate 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.
  - d. 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 the Offer.
  - e. The Seller shall pay all real estate transfer taxes payable pursuant to Section 77.25, Wisconsin Statutes, if any.
  - f. 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 as of the date of closing.
  - g. The Seller shall pay one-half, and the Buyer shall pay the other half of any closing escrow fees charged by the Title Company to facilitate closing. All other closing costs shall be prorated between the Seller and the Buyer as is customary for commercial real estate transactions in the City of Madison, Wisconsin.

13. Acceptance. Acceptance of the Offer may occur upon approval by Common Council of the City of Madison. The Seller will receive notification of acceptance of the Offer by the Buyer delivering or mailing via certified mail, return receipt requested, a fully-executed original of the Offer to the Seller, at any time on or before June 25, 2014, whereupon the Offer and the acceptance thereof shall become a binding contract. If the Buyer does not accept the Offer within the prescribed time period, the Offer shall become null and void and be of no further force or effect.

BE IT FURTHER RESOLVED that a portion of the Real Estate, as determined by the City Engineer, shall be dedicated for public right-of-way and the Engineering Division shall prepare a map and legal descriptions necessary to define that portion of the Real Estate that will be dedicated for public right-of-way. A permanent limited easement for construction and grading purposes shall be granted over that portion of the Real Estate not dedicated for public right-of-way.; and

BE IT STILL FURTHER RESOLVED that upon dedication of the public right-of-way and permanent limited easement, the existing house on the Real Estate shall be demolished by the City. A building demolition permit is not required based on a City Attorney opinion stating that any existing dwellings located partially within lands dedicated for public right-of-way are not subject to Madison General Ordinances pertaining to demolition; and

BE IT FINALLY 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.

## EXHIBIT A

### LEGAL DESCRIPTION

Part of the Northwest 1/4 of the Southwest 1/4 of Section Twelve (12), Township Seven (7) North, Range Ten (10) East, in the City of Madison, formerly of the Town of Blooming Grove, Dane County, Wisconsin described as follows:

Commencing at the intersection of the South line of Highway 30 with the East line of the Highway running North and South between Sections 11 and 12 in the City of Madison; thence East along the South line of Highway 30, 86 feet; thence South at right angles to Highway 30, 190 feet; thence West parallel with Highway 30, 86 feet to the East line of the North and South road; thence North along said East line to the point of beginning. EXCEPT land conveyed by Warranty Deed dated June 4, 1964 in Volume 780 of Deeds, page 529, as Document No. 1105767.

APN/Tax Key No.:251/0710-123-0304-7