



Legislation Text

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Fiscal Note

The proposed resolution authorizes a sale between the City of Madison and Greywolf Partners, Inc. or its assigns for six City-owned lots in the Center for Industry and Commerce. The total purchase prices is \$965,842.50. Proceeds from the sale will be distributed to the General Land Acquisition Fund (account no. 14006010-48110-00000). Roughly \$227,637 of sale proceeds will be applied towards outstanding special assessments on the six lots sold. In addition, a brokerage fee of \$28,975.28 will be paid to CBRE Brokerage Services. After paying \$1667 for title and closing costs, the remaining net proceeds of \$707,563.23 will be applied towards paying off special assessments on properties owned by the City of Madison located elsewhere within the Center for Industry and Commerce.

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Greywolf Partners, Inc. for the purchase of City-owned Lots 21-23 and Lots 32-34 in The Center for Industry & Commerce.

Body

The Common Council adopted a resolution (RES-13-00460) on June 18, 2013 which authorized the execution of an "Agreement to Terminate the 'Agreement to Purchase and Undertake Development of the Northeast Industrial Property' " ("Purchase and Development Agreement") which was executed between the City of Madison ("City") and The Center for Industry & Commerce, LLC ("LLC") for the development of a mixed-use industrial park. Under the terms of the Purchase and Development Agreement, the LLC deeded back to the City, at no cost, 14 lots it had previously purchased from the City, and was relieved of any remaining obligations, including the obligation to purchase an additional 78 lots from the City. The City currently owns 66 lots within The Center for Industry & Commerce ("The CIC"). These lots are being marketed by the City. The adoption of this resolution will authorize the sale of Lots 21-23 and Lots 32-34 owned by the City in The CIC.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement ("Agreement") between the City and Greywolf Partners, Inc. and/or its assigns ("Buyer"), with the prior written approval of the City for the purchase of Lots 21-23 and Lots 32-34, totaling 386,337 square feet (collectively, "Property"), in The CIC, on substantially the following terms and conditions:

- 1. Property.** Buyer shall purchase and City shall sell and convey by Warranty Deed ("Deed") fee simple ownership of the Property, including all improvements located thereon and all appurtenances thereto.
- 2. Effective Date.** The "Effective Date" shall be the later date of execution of the Agreement by City or Buyer, as indicated on the signature page of the Agreement.
- 3. Purchase and Sale Agreement.** City agrees to provide Buyer with a draft of the Agreement within five (5) business days of Common Council approval of the terms stated herein.
- 4. Purchase Price.** The purchase price for City's interest in the Property ("Purchase Price") shall be \$2.50 per square foot of land, totaling approximately \$965,842.50. The Purchase Price shall be payable in cash at Closing, as described in Paragraph 16, subject to the adjustments and prorations provided in the Agreement.
- 5. Earnest Money.** Within five (5) days of the Effective Date, Buyer shall deposit with Buyer's title

insurance company, First American Title Insurance Company, the amount of Twenty-Five Thousand and no/100 Dollars (\$25,000) as "Earnest Money," which will be non-refundable except as otherwise provided in Paragraph 6, and shall be applied toward the Purchase Price at Closing, in accordance with Paragraph 4. In the event of Buyer's default prior to Closing, City may seek to retain the Earnest Money as its sole remedy.

6. Due Diligence Period. Buyer shall have one hundred eighty (180) calendar days following the Effective Date ("Due Diligence Period") to obtain, at Buyer's sole cost, acceptable financing, title, survey, and any physical, environmental or governmental conditions and approvals necessary for Buyer's intended use of the Property. If within the Due Diligence Period Buyer determines, in its sole discretion, that it does not desire to purchase the Property, Buyer must provide written notice to City of such desire and the Agreement shall terminate immediately upon City's receipt of said notice. If Buyer timely terminates the Agreement as provided in this paragraph, the Earnest Money, shall be immediately refunded to Buyer.

Buyer agrees that if it terminates the Agreement, as provided for therein, or fails to close the transaction contemplated thereby for any reason, then, Buyer shall deliver to City, at no cost to City, complete and accurate copies of all of Buyer's due diligence materials other than any attorney work product or attorney-client privileged documents.

Buyer shall keep the Property free of all liens in connection with its due diligence of the Property and shall cause all such liens to be removed immediately upon being notified of same.

If Buyer does not provide written notice to City terminating the Agreement on or prior to the end of the Due Diligence Period, the Agreement shall remain in full force and effect, Buyer shall accept the Property as-is, and the parties shall proceed to close the transaction as provided in the Agreement.

Should Buyer desire to close prior to the end of the Due Diligence Period, Buyer may provide City with written notice of its intent to do so. The provision of such notice by Buyer shall not affect the terms contemplated in the Agreement, except that the closing date shall occur on or before thirty (30) days from the date City receives such notice, unless the parties agree in writing to another date.

7. Construction Contingency. Buyer shall agree to commence construction on the Property within eighteen (18) months of the Effective Date. In the event Buyer fails to commence construction in that timeframe, City shall have the right, but not the obligation, to purchase the Property back from Buyer at the Purchase Price less any closing, title and transfer costs incurred by the City, that will be further defined in the Agreement.

8. Access to the Property. Buyer and Buyer's authorized agents, engineers, consultants, appraisers, and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing during the Due Diligence Period including, but not limited to, a Phase 1 or 2 environmental assessment of the Property and/or a physical inspection of the Property at reasonable times with at least twenty-four (24) hours' prior written notice to City. Buyer's and Buyer's authorized agents, engineers, consultants, appraisers, and contractors access to, and inspection of, the Property shall be at Buyer's sole risk and expense and City shall have no responsibility therefor. Buyer shall, at Buyer's sole cost, repair all damage caused by its inspections or testing so that the condition of the Property is returned to as good or better condition as that which existed prior to the inspections or testing.

9. Successors and Assigns. The provisions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives. The Buyer can only assign this Agreement with the prior written approval of the City.

10. Insurance. Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors performing work on the Property shall carry commercial general liability insurance covering as insured Buyer and naming City, its officers, officials, agents and as additional insureds, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the City's Risk Manager. These policies shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of the Agreement. As evidence of this coverage, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall furnish City with a certificate of insurance on a form approved by City, and, if requested by the City Risk Manager, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall also provide copies of additional insured endorsements or policy to City prior to the performance of any work on the Property. If the coverage required above expires while the Agreement is in effect, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to City for approval.
11. Lease. City shall represent that the Property is not leased or occupied, and City shall agree that it shall not enter into any lease or rental agreement for the Property, or any portion thereof, or allow the occupation of the Property during the Due Diligence Period and through the date of Closing, without the prior written consent of Buyer.
12. Personal Property. The purchase of the Property does not include any personal property.
13. Survey. Any survey of the Property including, but not limited to, an ALTA/NSPS Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/NSPS 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 Buyer and the title company providing the title insurance described in Paragraph 5, shall be at Buyer's sole cost.
14. Title Insurance. City shall provide to Buyer, at City's expense, within fifteen (15) days after the Effective Date a commitment from a title company ("Title Company") to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents. Any gap endorsement desired by Buyer shall be provided at Buyer's sole expense. 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 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 exceptions acceptable to Buyer ("Permitted Exceptions"). Buyer shall notify City of any valid objection to title, in writing, within fifteen (15) days of Buyer's receipt of the title commitment. City shall have a reasonable time, but not exceeding five (5) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should City be unable or unwilling to carry out the Agreement by reason of a valid legal defect in title which Buyer is unwilling to waive, the Agreement shall be void and the Buyer shall be entitled to a return of the Earnest Money.
15. Limited Representations and Warranties: AS-IS Condition. Except as otherwise provided in the Agreement, 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 City, its agents or employees, in entering into the Agreement or in closing the transaction described therein. Except as provided below, Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the due diligence requirements provided in Paragraph 6 above. Notwithstanding the foregoing, City agrees to provide the new streets, to be referred to as John Wall Way and Graaskamp Way ("New Streets"), and related infrastructure via a special assessment against the Property. Buyer shall be responsible for its

prorated share of the cost of the New Streets and related infrastructure via a special assessment against the Property. The timeframe for a commencement and completion date of the New Streets will be established in the Agreement.

16. Closing.

- a. Closing shall occur within thirty (30) days of the expiration of the Due Diligence Period, or Buyer's earlier waiver of its due diligence requirements, unless the parties mutually agree to a different date.
- b. City agrees to execute and deliver to Buyer at Closing the Deed conveying the Property to Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and the Permitted Exceptions.
- c. Buyer shall pay all recording/filing fees except that City 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. City shall be responsible for any and all special assessments, against the Property existing as of the date of Closing. Buyer shall be responsible for any future special assessments against the Property following the date of Closing.
- e. City shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.
- f. City agrees to execute and deliver to the title company any affidavits required to issue an owner's policy in the condition called for by the Agreement including, but not limited to, an Owner's Affidavit, Gap Indemnity, and Non-Foreign Transferor affidavit.
- g. City shall pay all costs of providing the title commitment and Owner's Policy of Title Insurance to Buyer; Buyer shall be responsible for any simultaneous issue premium for a Lender's Policy.
- h. Buyer and City shall share equally the closing fee charged by the title company.

17. Fees. Buyer will be responsible for any future impact fees related to any development on the site after Closing.

18. Broker Representation. City acknowledges that CBRE represents Buyer in this transaction, and City shall pay CBRE a sale commission of 3% of the Purchase Price in full at Closing.

BE IT FURTHER RESOLVED that the proceeds from the sale of the Property shall be credited against the outstanding special assessments on the balance of the Property, and any remaining proceeds after the payment of the broker's fee and closing costs shall be used to pay down the remaining balance of The CIC's special assessments on other lots in the park.

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 all in a form to be approved by the City Attorney.