



## Legislation Text

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**File #:** 37097, **Version:** 2

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### **Fiscal Note**

This resolution amends both the 2015 Capital Budget and the Capital Improvement Program. Project #1 "Library Maintenance Support Center" of the 2015 Adopted Library Capital Improvement Program contains \$500,000 in General Obligation funding for the Year 2015, and an additional \$2,500,000 for the Year 2016. This amendment would accelerate \$500,000 of the 2016 borrowing to 2015, resulting in a new distribution of \$1,000,000 of G.O. debt funding in 2015 and \$2,000,000 in 2016. Acceleration of the \$500,000 of borrowing by one year would also result in the acceleration of approximately \$60,000 of annual debt service payments by one year.

### **Title**

SUBSTITUTE Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Graybar Electric Company, Inc. for the purchase of property located at 1301 West Badger Road for the location of a warehouse and distribution facility for the Public Library and authorizing an amendment to the Capital Budget to fund the purchase of the property, complete the design and construction process and begin renovation of the property.

### **Body**

The Madison Public Library, during the design process for the new Central Library, determined that using Central Library as the service and support facility for the 9 library Madison Public Library system greatly diminished the program capability of the new library. It was resolved, therefore, to remove these functions to a more suitable site to meet the storage and maintenance needs of Madison Public Library, while trying to maintain a centralized location for expedient deployment of services across the city.

A temporary site was leased at 2422 Pennsylvania Avenue which demonstrated the efficiency of a warehouse dedicated facility. In 2011, capital funds of \$3,250,000 were obtained to construct a permanent service and support facility. Through the efforts of the City's Long Range Facility Planning Committee, it was determined that Monona Terrace and Madison Public Library shared similar off-site storage needs, and since 2013, Monona Terrace has leased approximately 3,000 of the available 15,000 square feet at 2422 Pennsylvania Ave. Monona Terrace and Madison Public Library will continue and perhaps expand that relationship in the permanent facility.

A property at 1301 W. Badger Road (the "Property") has been identified by Madison Public Library as a site that, if purchased by the City, would provide an ideal site for a permanent Service and Support Facility. The Property has approximately 16,500 square feet of improvements on 0.77 acres, with the capacity to build out an attached additional 4,000 to 6,000 square feet to the back of the existing structure. The Property has access to the city's MUFN network, sufficient parking, and allows for equitably drive-times to reach the library's easternmost and westernmost locations. The Property was formerly occupied by Graybar Industries for their distribution and warehouse. The Property easily mirrors the needed functionality required for our Service and Support with minor renovations and upgrades.

The purchase price of \$715,000 slightly exceeds available 2015 funds, and coupled with a credible timeline to allow Madison Public Library to make modifications and allow complete transfer of assets to the new property before the need to extend our the 2422 Pennsylvania lease (one year renewal clause effective 4/1/16 to 3/31/17), Madison Public Library requests reallocation of \$500,000 from 2016 project funds to 2015 to purchase the property, complete design and construction documents, complete major construction elements, and take occupancy prior to 4/1/16.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement (the "Agreement") between the City (the "Buyer") and Graybar Electric Company, Inc. (the "Seller") for the purchase of a property owned by the Seller located at 1301 West Badger Road, Madison, Wisconsin (the "Property"), legally described in Exhibit A below and depicted on the attached Exhibit B, for the location of a permanent Service and Support Facility for the Madison Public Library, on the following terms and conditions:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Warranty Deed (the "Deed"), fee simple ownership of the Property, including all improvements and fixtures located thereon and all appurtenances thereto.
2. 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.
3. Purchase Price. The total purchase price for the Seller's interest in the Property including the existing warehouse racking (the "Purchase Price") shall be Six Hundred Ninety Five Thousand Dollars (\$695,000). The Purchase Price shall be payable in cash at Closing, subject to the adjustments and prorations herein provided.
4. Escrow Account. Within ten (10) calendar days of the Effective Date, an escrow account (the "Escrow") will be established by the Seller with St. Louis Title, LLC or a locally affiliated office (the "Title Company").
5. Earnest Money. Upon opening of the Escrow, the Buyer shall deposit Thirty Five Thousand Dollars (\$35,000) with the Title Company (the "Earnest Money") which will be non-refundable except as otherwise provided in the Agreement, and shall be applied toward the Purchase Price at Closing in accordance with Paragraph 3.

The Earnest Money shall become non-refundable to the Buyer upon written notice from the Buyer to the Seller of its intent to proceed to Closing. At Closing the Buyer shall pay the Seller Six Hundred Sixty Thousand Dollars (\$660,000), subject to the adjustments and prorations herein provided.

6. Delivery of Documents. Within ten (10) days of the Effective Date , the Seller will reproduce at the Seller's expense and send, either electronically or by hard copy, to the Buyer at the Buyer's office copies of the following documents in the Seller's possession or control: all environmental studies, reports, permits, applications and remediation plans or assessments of the Property, and all building plans, studies, reports, 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.
7. Due Diligence Period. The Buyer shall have sixty (60) 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 the Agreement shall terminate immediately. If the Buyer timely terminates the Agreement as provided in this paragraph, the Earnest Money, including all accrued interest, shall be immediately refunded to the Buyer. Buyer

If the Buyer does not provide written notice terminating the Agreement on or prior to the sixtieth (60<sup>th</sup>) day of the Due Diligence Period, the Agreement shall remain in full force and effect, the City 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 the Agreement, except that the Closing Date 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.

8. Access to Property. From and after the date of this Letter of Intent until the Closing Date or earlier termination of this Letter of Intent as provided herein, the Seller shall permit the Buyer and its authorized representatives to inspect the Property to perform due diligence, tests, soil analysis and environmental investigations, to examine the records of the Seller with respect to the Property, and make copies thereof, at such times during normal business hours as the Buyer or its representatives may request. All inspection fees, appraisal fees, engineering fees and all other costs and expenses of any kind incurred by the Buyer relating to the inspection of the Property shall be solely the Buyer's expense.
  
9. The Buyer shall give the Seller reasonable prior notice before the Buyer enters upon the Property. The Buyer shall require any of its agents or contractors conducting any tests or studies performing work on the Property shall maintain the following insurance: (a.) Worker's Compensation to the full extent required by law, (b.) commercial to carry comprehensive general General liability Liability insurance Insurance covering claims for bodily injury and property damage with limits in an amount of not less than \$1,000,000 per occurrence; and, (c.) Commercial Auto Liability Insurance with a combined single limit of not less than \$1,000,000. If requested, certificates of insurance evidencing these coverages shall be provided to the Seller prior to the performance of any work by the Buyer, its agents or contractors. In the event this transaction fails to close for any reason, the Buyer shall restore the Property to its condition prior to such surveying, inspecting and testing. The Buyer shall keep the Property free of all liens in connection with its inspection of the Property and shall cause all such liens to be removed immediately upon its being notified of same. Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies and representatives and shall be responsible for any losses, claims and liabilities which are attributable to such acts, errors, or omissions providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, board, committees, commissions, agencies and representatives. It is not the intent of the parties to waive any statutory protections or impose liability beyond that imposed by state statutes. The Buyer agrees that if it terminates this Letter of Intent, as provided herein, or fails to close the transaction contemplated hereby for any reason, then, the Buyer shall deliver to the Seller, at no cost to the Seller, complete and accurate copies of all of the Buyer's due diligence materials other than any attorney work product or attorney-client privileged documents.
  
10. Lease. The Seller shall represent that the Property is currently not leased and the Seller shall agree that it shall not enter into any lease or rental for the Property, or any portion thereof, during the Due Diligence Period and through the date of closing, without the prior written consent of the Buyer.
  
11. Personal Property. The purchase of the Property does not include any personal property, with the exception of the warehouse racking referenced in Paragraph 3. All other personal property shall be removed by the Seller prior to Closing.
  
12. Chapter 709. The Buyer acknowledges that the Seller will not provide a Real Estate Condition Report and agrees that Buyer rescinds its Chapter 709 rights.

13. 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, 2011 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 11 shall be at the sole cost and expense of the Buyer.
14. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing a commitment from the Title Company to issue a standard Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents, together with a gap endorsement. If the Buyer elects to obtain an extended coverage (ALTA) owner's policy, the incremental cost of such extended coverage above the cost of a standard coverage owner's policy shall be borne by the Buyer. 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 exceptions acceptable to the Buyer ("Permitted Exceptions"). 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 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.
15. In-Kind Exchange. The Seller, at its option, may structure the sale of the Property as a tax-deferred exchange ("Exchange") pursuant to Section 1031 of the Internal Revenue Code. If the Seller shall elect to undertake an Exchange, the following terms shall apply:
- a. The Seller, at its option, may assign its right in and delegate its duties (in part or in whole) under the Agreement, as well as the transfer of its interest in the Property, to an Exchange Accommodator, selected by the Seller. The Seller shall provide the Buyer with written notice of any such assignment.
  - b. The Buyer agrees to cooperate with the Seller in connection with the Exchange, by executing documents of exchange (including, but not limited to, escrow instructions and amendments to escrow instructions).
  - c. The transaction contemplated in the Agreement shall timely close in accordance with the terms contained in the Agreement, notwithstanding any failure, for any reason, of the consummation of the Exchange.
  - d. All representations, warranties, covenants, and indemnification obligations of the Seller to the Buyer shall inure to the benefit of the Buyer, notwithstanding the Exchange.
16. Condition. The Buyer and the Seller agree that the Property is being purchased in its "as-is condition".
17. 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 Seller's receipt of notice from Buyer requesting an earlier Closing Date; or (c) such other date agreed to in writing by the parties.
  - 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 the Permitted Exceptions.

- 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 2015 real estate taxes with respect to the Property shall be prorated between the Buyer and Seller as of the Date of Closing based upon the period of ownership of the parties and 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 or taxes due in connection with the conveyance of the Property.
  - g. The Seller and the Buyer shall share equally and pay their respective share of any escrow fees charged in connection with the Closing.
  - h. The Seller shall pay Oakbrook Corporation a commission per the terms of the Exclusive Listing Agreement currently in effect between the parties.
  - i. The Buyer and the Seller shall each pay their respective legal fees and expenses incurred as of the result of the preparation and negotiation of the Agreement.
18. Confidentiality. The parties shall keep confidential the terms and conditions of this Counter Offer, and subsequent Agreement, except as reasonably necessary for performance hereunder and to the extent disclosure may be required by the Buyer's legislative approval process, applicable laws, regulations, or governmental open record requests.

BE IT FURTHER RESOLVED that the 2105 Capital Budget be amended to transfer \$500,000 of the \$2,500,000 allocated for this project in 2016 to 2015 to fund the purchase of the Property, completion of the design and construction document process and begin renovation of the Property to enable to move out of its temporary space at 2422 Pennsylvania Avenue prior to the March 31, 2015 lease renewal date.

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

### THE PROPERTY LEGAL DESCRIPTION

Lots Two (2) and Three (3), Haen Subdivision No. 2, City of Madison, Dane County, Wisconsin.