Legislation Details (With Text)

File #:	27233	**Version:**	1	**Name:**	9010 Truman Olson Offer - Sales Agmt
Type:	Resolution			**Status:**	Passed
File created:	7/27/2012			**In control:**	BOARD OF ESTIMATES (ended 4/2017)
On agenda:	9/4/2012			**Final action:**	9/4/2012
Enactment date:	9/6/2012			**Enactment #:**	RES-12-00655

Title: Authorizing the execution of an Offer to Purchase Real Property, Acceptance and Sales Agreement for the purchase of the former Truman O. Olson Army Reserve Center located at 1402 South Park Street and authorizing the City to indemnify and hold harmless the United States of America.

Sponsors: Sue Ellingson

Indexes:

Code sections:

Attachments: 1. 9010 Exhibit.pdf, 2. PC Registration Forms 082012.pdf, 3. Registration Forms from 9-4-12 Common Council Meeting.pdf

Date	Ver.	Action By	Action	Result
9/4/2012	1	COMMON COUNCIL	Adopt	Pass
8/27/2012	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
8/20/2012	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
8/7/2012	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
8/7/2012	1	COMMON COUNCIL	Referred	Pass
7/27/2012	1	Economic Development Division	Referred for Introduction	

Fiscal Note

Funds for the purchase of this property, estimated at $1,078,600, plus closing costs are authorized in the 2012 PCED Adopted Capital Budget, Project No. 12, "TID 42 - Wingra," Account No. 824201. The purchase of this property will be charged against TID# 42-Wingra.

Title

Authorizing the execution of an Offer to Purchase Real Property, Acceptance and Sales Agreement for the purchase of the former Truman O. Olson Army Reserve Center located at 1402 South Park Street and authorizing the City to indemnify and hold harmless the United States of America.

Body

The former Truman O. Olson U.S. Army Reserve Center located at 1402 South Park Street (the “Property”) is being disposed of by the federal government. The Property consists of approximately 3.49 acres, with a 25,727 square foot permanent structure and two surface parking lots. The Property was previously used by the U.S. Army Reserve for administrative and training activities. The federal government has declared the Property surplus to its needs. As required under federal statutes, the Community Development Authority of the City of Madison (the “CDA”) has been designated by the Common Council as the Local Redevelopment Authority (the “LRA”) for the disposition of the Property.

Acting as the LRA, the CDA has drafted a Redevelopment Plan recommending that the Property be used for economic development purposes, including the demolition of the improvements located thereon and the extension of Cedar Street through the Property, as outlined in the City’s Wingra BUILD Plan and as

accommodated by the Notices of Interest in the Property from both Porchlight and Goodwill, which Notices provide alternate locations for homeless facilities. On September 9, 2008, the Common Council adopted a resolution (File No. 11307, Enactment No. RES-08-00864) that adopted the recommendations in the Redevelopment Plan, the Homeless Assistance Submission (including Legally Binding Agreements with Porchlight and Goodwill) and Public Comment documents (collectively the "Documents') regarding the Property and authorized the LRA to submit the Documents to the federal government for approval.

On May 26, 2011, the U.S. Department of Housing and Development notified the City that the Documents submitted complied with the requirements of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 and that the City could move forward with implementing the redevelopment plan, including pursuing a negotiated sale of the Property from the U.S. Department of the Army (the "DOA") and the off-site homeless assistance accommodation with Porchlight and Goodwill as described in the legally binding agreements between the parties. The City has completed its off-site homeless assistance accommodation of both Porchlight and Goodwill and has negotiated a purchase price with the DOA. The purchase price is supported by an appraisal obtained by the Office of Real Estate Services.

The United States government requires that the Quit Claim Deed (the "QCD") conveying the Property to the City contain provisions: (1) requiring the City to indemnify and hold harmless the United States Government; and (2) addressing excess profits should the City sell all or a portion of the Property within three years from the date of conveyance. This resolution authorizes the acceptance of the QCD with said provisions included. The indemnification and hold harmless language has been reviewed by the City's Risk Manager.

NOW, THEREFORE, BE IT RESOLVED that the Common Council hereby authorizes the execution of an Offer to Purchase Real Property, Acceptance and Sales Agreement ("Offer") between the City (the "Purchaser") and the United States of America (the "Government") for the purchase of the former Truman O. Olson U.S. Army Reserve Center located at 1402 South Park Street (the "Property"), as legally described below and shown on the attached exhibit, for a purchase price of $1,078,600.00 (the "Offer Amount"), on the following terms and conditions:

I. Property: Truman O. Olson U.S. Army Reserve Center (USARC), 1402 South Park Street, Madison, Wisconsin 53715, consisting of approximately 3.5 acres of land and improvements located thereon.

II. Special Terms of Sale.

1. BID DEPOSIT. The Offer shall be on a cash basis, payable in United States dollars. An earnest money deposit in the amount of twenty percent (20%) of the Offer Amount ($215,720.00) shall accompany the Offer. The deposit is in the form of United States currency, cashier's check, certified check, or money order issued by and drawn upon, or certified by a bank or other financial institution chartered by the Federal Government or a State of the United States, payable to the order of "FAO USAED-Omaha." In the event of any default by the **Purchaser** in the performance of the Offer created by such acceptance, or in the event of failure by the **Purchaser** to consummate the transaction, the deposit, together with any payments subsequently made on account, may be forfeited at the option of the **Government**, in which event the **Purchaser** shall be relieved from further liability.

2. BALANCE PAYABLE. The balance of the Offer Amount ($862,880.00) shall be payable in full at the time of closing of the transaction (the "Closing"). The balance shall be payable in the form of a certified or cashier's check payable to "FAO USAED-Omaha" and delivered to the District Engineer, U.S. Army Corps of Engineers (USACE), Omaha District, Real Estate Division, ATTN: CENWO-RE-S, 1616 Capitol Avenue, Suite 9000, Omaha, Nebraska 68102-4901. The **Purchaser** offers and agrees that the Offer is a continuing offer for a period of sixty (60) calendar days after the date the **Purchaser** signs the Offer. The **Purchaser** shall be prepared to close in no less than thirty (30) days following the **Government's** notification to the **Purchaser** that the

Quit Claim Deed (the "QCD") conveying the Property has been executed by the Deputy Assistant Secretary of the Army.

3. POSSESSION. The **Purchaser** expressly agrees that it will not possess the Property until the Closing.

4. TAXES. On the date of conveyance, the **Purchaser** shall assume responsibility for all general and special real and personal property taxes which may have been or may be assessed on the Property and to prorate sums paid, or due to be paid, by the **Government** in lieu of taxes.

5. RISK OF LOSS. On the date of conveyance, the **Purchaser** shall assume responsibility for care and handling and all risks of loss or damage to the Property and have all obligations and liabilities of ownership.

6. GOVERNMENT LIABILITY. If the Offer is accepted by the **Government** and: (a) The **Government** fails for any reason to perform its obligations as set forth herein; or (b) Title does not transfer or vest in the **Purchaser** for any reason, although **Purchaser** is ready, willing, and able to close, the **Government** shall promptly refund to **Purchaser** all money **Purchaser** has submitted to the **Government**, without interest, and the **Government** shall have no further liability to **Purchaser**.

7. TITLE EVIDENCE. Any title evidence which may be desired by the **Purchaser** will be procured by it at its sole cost and expense. The **Government** will, however, cooperate with the **Purchaser** or its authorized agent in this connection, and will permit examination and inspection of such deed, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title of the Property as it may have available. It is understood that the **Government** will not be obligated to pay for any expense incurred in connection with title matters or survey of the Property.

8. TITLE. If the **Purchaser's** Offer is accepted, the QCD will convey the **Government's** interest in the Property.

9. DELAYED CLOSING. The **Purchaser** shall pay interest on the outstanding balance of the Offer Amount if the Closing is delayed, and the delay is caused, directly or indirectly, by the **Purchaser's** action and not by any action on the part of the **Government**. The interest rate shall be computed based on the yield of 10-year United States Treasury maturities as reported by the Federal Reserve Board in "Federal Reserve Statistical Release H.15" plus 1-1/2% rounded to the nearest one-eighth percent (1/8%) as of the date the Property is determined suitable for transfer. The **Government** reserves the right to refuse a request by the **Purchaser** to extend the Closing.

10. DOCUMENTARY STAMPS AND COST OF RECORDING. The **Purchaser** shall pay all taxes and fees imposed on the transaction, if any, and shall obtain at **Purchaser's** own expense and affix to all instruments of conveyance and security documents such revenue and documentary stamps as may be required by Federal and local law. All instruments of conveyance and security documents shall be placed on record in the manner prescribed by local recording statutes at the **Purchaser's** expense.

11. CONTRACT. The Offer, together with the additional terms and conditions contained therein, when accepted by the **Government**, shall constitute an agreement for sale between the **Purchaser** and the **Government**. The Offer shall constitute the whole contract to be succeeded only by the formal instruments of transfer, unless modified in writing and signed by both parties. No oral statements or representations made by, or for, or on behalf of either party shall be a part of such contract. Nor shall the contract or any interest therein, be transferred or assigned by the **Purchaser** without

consent of the **Government**, and any assignment without such consent shall be void.

12. OFFICIALS NOT TO BENEFIT. No member of or Delegate to the Congress, or Resident Commissioner, shall be admitted to any share or part of the contract of sale or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract of sale if made with a corporation for its general benefit.

III. GENERAL TERMS.

1. The **Purchaser** has inspected the Property and acknowledges that the Property is being purchased *"as is"* and *"where is"* without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind or that the same is in condition or fit to be used for the purpose for which intended, and no claim for any allowance or deduction upon such grounds will be considered after the Offer is made.

2. Upon conveyance, the Property will become subject to all applicable laws, ordinances, and regulations, which may not have applied while title remained in the United States, including building or zoning ordinances and post conveyance taxes that were previously not in effect.

BE IT FURTHER RESOLVED that the Common Council hereby authorizes acceptance of the QCD to the City (the "Grantee") from the United States of America (the "Grantor'), which shall contain the following indemnification/hold harmless and excess profits provisions:

A. "HOLD HARMLESS. To the extent authorized by law, the Grantee, its successors and assigns, covenant and agree to indemnify and hold harmless the Grantor, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed by the Grantee, its successors and assigns; and (2) any and all claims, damages, and judgments arising out of, or in any manner predicated upon, exposure to asbestos, lead-based paint, or other condition on any portion of the Property after the date of conveyance**.**

The Grantee**, its successors and assigns, covenant and agree that the** Grantor **shall not be responsible for any costs associated with modification or termination of the** NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS **in this Deed, including without limitation, any costs associated with additional investigation or remediation of asbestos, lead-based paint, or other condition on any portion of the Property.**

Nothing in this "Hold Harmless" provision will be construed to modify or negate the Grantor's obligation under CERCLA or any other statutory obligations."

B. "EXCESS PROFITS. This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period from the date of transfer of title by the GRANTOR, the GRANTEE, or its successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the GRANTEE's or a subsequent seller's actual allowable costs will be remitted to the GRANTOR. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the GRANTOR."

BE IT STILL FUTHER RESOLVED that funds in an amount not to exceed $5,000 are authorized for

miscellaneous closing costs (title report, recording fees, etc.).

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to execute any and all documents required to complete the transaction contemplated in this resolution.

Legal Description of the Property

A part of the Northeast Quarter (NE¼) of the Southwest Quarter (SW¼) of Section Twenty-Six (26), Township Seven (7) North, Range Nine (9) East of the Fourth Principal Meridian, City of Madison, Dane County, Wisconsin, more particularly described as follows:

> Beginning at point of intersection of the West line of South Park Street and the South line of Cedar Street, as shown in the Woodland Plat of the City of Madison, extended Westerly; thence West along said Westerly prolongation of the South line of Cedar Street to a point 500 feet East of, measured at right angles to, the West line of Northeast Quarter (NE¼) of the Southwest Quarter (SW¼) of Section Twenty-six (26), Township Seven (7) North, Range Nine (9) East of the Fourth Principal Meridian, Dane County, Wisconsin; thence South 250 feet on a line parallel to and 500 feet East of, measured at right angles to, said West line of Northeast Quarter (NE¼) of the Southwest Quarter (SW¼) of said Section Twenty-six (26); thence East on a line parallel and 250 feet south of, measured at right angles to, the said Westerly prolongation of the South line of Cedar Street to the West line of South Park Street; thence Northerly along said West line of Park Street to the point of beginning, containing 3.49 acres, more or less.

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