



## Legislation Details (With Text)

<b>File #:</b>	29920	<b>Version:</b>	2	<b>Name:</b>	10146 Acquisition MFD Training Facility Multiple Locations
<b>Type:</b>	Resolution	<b>Status:</b>	Passed		
<b>File created:</b>	4/24/2013	<b>In control:</b>	BOARD OF ESTIMATES (ended 4/2017)		
<b>On agenda:</b>	5/21/2013	<b>Final action:</b>	5/21/2013		
<b>Enactment date:</b>	5/22/2013	<b>Enactment #:</b>	RES-13-00375		
<b>Title:</b>	SUBSTITUTE Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and FHB Investments LLC for the purchase of parcels located at 5102 and 5152 Femrite Drive, 3101 and 3218 Dairy Drive, 4949 Prairie Dock Drive, 45 Marsh Court and 2698 I 90-39 for the location of a fire station and firefighter development center, the transfer of 45 Marsh Court to the Storm Water Utility and an amendment to the 2013 Capital Budget to provide funds for the purchase of the parcels and design services.				
<b>Sponsors:</b>	Denise DeMarb				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. 10146 Exhibit B The Property.pdf, 2. Version 1 29920 10146Master09-May-2013-08-54-56.pdf				

Date	Ver.	Action By	Action	Result
5/21/2013	2	COMMON COUNCIL	Adopt Unanimously	Pass
5/13/2013	2	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT (15 VOTES REQUIRED) - REPORT OF OFFICER	Pass
5/6/2013	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
5/1/2013	1	BOARD OF ESTIMATES (ended 4/2017)	Referred	
4/30/2013	1	COMMON COUNCIL	Refer	Pass
4/24/2013	1	Economic Development Division	Referred for Introduction	

### Fiscal Note

The 2012 Fire Department capital budget included G.O. borrowing of \$1.4 million to fund the City's purchase of space in a new joint facility with Madison College. That purchase did not take place due to a failure in negotiations between the City and Madison College. This resolution proposes using the previously borrowed funds to purchase land and begin design for a City employee development center and a 14<sup>th</sup> station. The Fire Department plans to request an additional \$10,050,000 during the period 2014 - 2018 to construct and equip an indoor training exercise building and tactical training tower, and to design, construct, furnish and equip a station and employee development center. (The station is estimated at \$8.1 million of the additional funding.) These expenditures are not included in the Capital Improvement Program. The Fire Department expects to staff the new station in 2018 at an estimated annual operating cost of \$2.1 million. This resolution also transfers, at no cost, a parcel assessed at \$2,500 to the Stormwater Utility.

### Title

SUBSTITUTE Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and FHB Investments LLC for the purchase of parcels located at 5102 and 5152 Femrite Drive, 3101 and 3218 Dairy Drive, 4949 Prairie Dock Drive, 45 Marsh Court and 2698 I 90-39 for the location of a fire station and firefighter development center, the transfer of 45 Marsh Court to the Storm Water Utility and an amendment to the 2013 Capital Budget to provide funds for the purchase of the parcels and design services.

## Body

The 2012 Fire Capital Budget approved \$1.4 million (Project No. 810744) for the City's purchase of space in Madison College's (MATC) Protective Services Building for a joint training facility. Negotiations between the City and Madison College failed and the purchase of the space never occurred. The Madison Fire Department has identified the parcels shown as A, B, C, D and D E (collectively, approximately 14.7 acres) on the attached Exhibit B "The Property" that it desires to acquire for the location of a new fire station and firefighter development center. Terms and conditions for the purchase of these parcels have been negotiated by the Office of Real Estate Services with FHB Investments LLC (the "Seller"). As a condition of sale, the Seller required that the City accept title, at no cost, to parcels F (approximately 2.1 acres) and G (approximately 2.9 acres) as shown on the attached Exhibit B. Upon closing, Parcel G will be transferred, at no cost, to the City's Storm Water Utility. Parcel F will be land banked by the City.

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 FHB Investments LLC (the "Seller") for the purchase of properties owned by the Seller located at 5102 and 5152 Femrite Drive, 3101 and 3218 Dairy Drive, 4949 Prairie Dock Drive, 45 Marsh Court and 2698 I 90-39, Madison, Wisconsin (collectively, the "Property"), legally described in Exhibit A below and depicted on the attached Exhibit B, for the location of a fire station and firefighter development center, on the following terms and conditions:

1. **Property.** The Buyer shall purchase, and the Seller shall sell and convey by Special Warranty Deed (the "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 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 (the "Purchase Price") shall be One Million Three Hundred Thousand Dollars (\$1,300,000). The Purchase Price shall be payable in cash at Closing, subject to the adjustments and prorations herein provided.
4. **Earnest Money.** Within ten (10) business days of the Effective Date, the Buyer shall pay to the Seller Ten Thousand Dollars (\$10,000) as "Earnest Money", which will be non-refundable except as otherwise provided in Paragraph 7 and the corresponding provisions of the Agreement, to be applied toward the Purchase Price at Closing in accordance with Paragraph Three (3).
5. **Delivery of Documents.** Within ten (10) days of the Effective Date and throughout the Buyer's Contingency Period as described in Paragraph 7, 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, permits, applications and remediation plans or assessments of the Property, and all building plans, studies, reports, or assessments related to the condition of the former 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 former improvements in the Seller's possession or control.
6. **Limited Representations and Warranties; AS-IS Condition.** Except as otherwise provided herein, 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, its agents or employees, in entering into the Agreement or in closing the transaction described herein. Except as provided below, 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's Contingencies, as described in Paragraph 7 below.

7. **Buyer Contingencies.** The Buyer shall have ninety (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 Agreement if any of the Buyer’s Contingencies are unacceptable, in the Buyer’s sole discretion. If the Buyer timely terminates the Agreement as a result of any of the Buyer’s Contingencies, the Earnest Money shall be promptly refunded to the Buyer.

- a. Inspections and Testing. The Buyer obtaining various inspections and testing of the Property and any improvements located thereon. The Buyer, at its sole expense, may obtain an inspection of any buildings and related improvements located on the Property, a Phase 1 or 2 environmental site assessment of the Property 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 Property or any improvements located thereon.
- b. Land Use Approvals. The Buyer securing all land use approvals for the use of the Property by the City of Madison’s Fire Department for the locating of a fire station and training facilities. Such approvals may include, but not be limited to: approval of a PUD, approval by the Urban Design Commission, and all other zoning, building, engineering, traffic and similar approvals and permits necessary to use the Property for the uses described herein.
- c. Appraisal. The Buyer obtaining, at its sole cost, an appraisal that supports the Purchase Price.
- d. Site Plan. The Buyer obtaining, at its sole cost, a site plan showing the suitability of the Property to accommodate the locating of a City of Madison Fire Department fire station and training facilities.
- e. Survey. The Buyer obtaining, at the Buyer’s expense, 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 the title company providing the title insurance described in Paragraph 10.

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.

8. Access to Property. The Buyer and the 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 anticipated by the Buyer’s Contingencies including, but not limited to, a Phase 1 or 2 environmental assessment of the Property and/or a physical inspection of the Property and 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’s access to, and inspection of, the Property 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 Property is returned to as good or better condition as existed prior to the inspections or testing.

9. Leasing. The Seller shall represent that the Property is not leased or occupied, and the Seller 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 Buyer’s Contingency Period and through the date of closing, without the prior written consent of the Buyer.

10. Title Insurance. The Seller shall provide to the Buyer, at the Seller’s expense, within thirty (30) days prior to Closing a commitment from First American Title Insurance Company (the “Title Company”) to issue an ALTA Owner’s Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents, together with a gap endorsement. 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.

11. Licensed Broker. The Seller shall acknowledge that Frank Bielinski has represented that he is a licensed real estate broker.

12. Closing.

a. Closing shall occur within thirty (30) days after the waiver or satisfaction of the Buyer's Contingencies listed in Paragraph 7, at the office of the Title Company, 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 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. The Buyer shall pay all 2013 real estate taxes with respect to the Property 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 the conveyance of the Property.

BE IT RESOLVED that upon closing on the Property, the parcel located at 45 Marsh Court shall be transferred to the Storm Water Utility, at no cost.

BE IT FURTHER RESOLVED that the 2013 Capital Budget be amended to authorize funding in the amount of ~~\$1,360,000~~ \$1,400,000 for the purchase of the Property \$1,300,000, appraisal \$4,000, environmental assessments and soil tests if necessary \$10,000, survey \$5,000, real estate taxes \$39,500 and miscellaneous closing costs \$1,000 and the remaining balance of the funds used for design services.

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 of the Property:

Lots 34, 35, 36, 52 and 53 Fourth Addition to World Dairy Center, City of Madison, Dane County, Wisconsin.

Outlots 7 and 11 Second Addition to World Dairy Center, City of Madison, Dane County, Wisconsin.