



### Legislation Details (With Text)

**File #:** 35033      **Version:** 1      **Name:** 10443 - ICP 2nd Amendment to Purchase

**Type:** Resolution      **Status:** Passed

**File created:** 7/29/2014      **In control:** BOARD OF ESTIMATES (ended 4/2017)

**On agenda:** 9/2/2014      **Final action:** 9/2/2014

**Enactment date:** 9/5/2014      **Enactment #:** RES-14-00629

**Title:** Authorizing the execution of a Second Amendment to the “Agreement to Purchase and Undertake Development of the Interstate Commerce Park” executed between the City of Madison, Interstate Commerce Park and Barbara J. Hoel.

**Sponsors:** Joseph R. Clausius

**Indexes:**

**Code sections:**

**Attachments:** 1. Interstate Commerce Park Exhibit 2014.pdf

Date	Ver.	Action By	Action	Result
9/2/2014	1	COMMON COUNCIL	Adopt	Pass
8/25/2014	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
8/5/2014	1	COMMON COUNCIL	Referred	
7/29/2014	1	Economic Development Division	Referred for Introduction	

**Fiscal Note**

The Resolution amends the agreement regarding the purchase price and disposition of City-owned property associated with development of an Interstate Commerce Park. The amendment reduces the current per-acre sale price from \$72,438/acre to \$40,000/acre (not including future escalators) for the remaining 38.79 acres, to better reflect market realities and to encourage development. The City's base purchase of the whole 59 acre development site is \$2,325,000. Since the initial 2004 development agreement, the City has been paid \$1.033M for the sale of 18.4 acres. If the remaining 38.79 acres were sold at \$40,000 each, total sale proceeds are approximately \$1.55M. Therefore, under the amendment which re-sets the per-acre price to \$40,000, the City might anticipate total sale proceeds of approximately \$2.58M. This amount is an estimated \$255,000 more than the City's acquisition costs. On balance, the amendment provides essentially a "break-even" arrangement for the City in terms of the acquisition costs and sales proceeds associated with the development, while also attempting to promote development in the face of market realities.

**Title**

Authorizing the execution of a Second Amendment to the “Agreement to Purchase and Undertake Development of the Interstate Commerce Park” executed between the City of Madison, Interstate Commerce Park and Barbara J. Hoel.

**Body**

In January 1994 the City of Madison (the “City”) conducted an Industrial Land Study that identified a shortage of developable land for industrial uses. On August 1, 2000 the Common Council adopted the Hanson Road Development Plan that identified lands north of Hoepker Road for light-industrial uses. On November 1, 2004 the City executed an “Agreement to Purchase and Undertake Development of the Interstate Commerce Park between the City of Madison and Gregory A. Rice and John R. Brigham and Rice Associates and Brigham Woods Corporation and Barbara J. Hoel” (the “Agreement”) for the City’s purchase of approximately 59 acres north of Hoepker Road (the “Property”) for development of a mixed-use industrial park (the “Interstate Commerce Park”), as shown on the attached exhibit. On August 31, 2006 Gregory A. Rice and John R.

Brigham and Rice Associates and Brigham Woods Corporation assigned its interest in the Agreement to Interstate Commerce Park, Inc. ("ICP"). The major terms of the Agreement, as amended, are:

1. The City would hold title to the Property and ICP would purchase the Property from the City and develop not less than approximately 50.15 net acres (excludes roads) in not more than 5 phases over 10 years. Initially each phase was required to be a minimum of 5 gross acres. The Agreement was subsequently amended to allow the purchase of phases in lesser acreage amounts under certain conditions.
2. The initial base price was \$39,136 per gross acre with an 8% annual escalator applied on August 1st of each year of the Agreement. The current base price is \$72,438 per gross acre.
3. The City is responsible for the construction of public roads and utilities within the Interstate Commerce Park with the special assessments being deferred for a period not to exceed 10 years (per MGO's) or until such time as a lot is sold or a building permit is issued for a lot. A portion of the platted public roads and utilities has been constructed and the costs of those improvements have been assessed to lots within the industrial park.
4. ICP is required to purchase all of the Property from the City by July 31, 2016. To date ICP has purchased 18.40 net acres of which all but 4.01 net acres have been sold to industrial users. 38.79 gross acres (36.51 net acres after the acreage for roads is taken out) remain to be purchased from the City. ICP has paid the City \$1,033,696.89 for the acreage it has purchased to date. The City's basis in the Property is \$2,325,000.

Recently ICP has been negotiating with Lakeside International Trucks ("Lakeside") for the purchase of 10.92 acres within Interstate Commerce Park for the relocation of its business currently located on Commercial Avenue in the City of Madison. Lakeside desires to expand its operations within the City and has identified land within the Interstate Commerce Park as the most suitable to its needs. However ICP cannot negotiate a sale price competitive with other industrial park sites identified outside of the City under the current terms of the Agreement. ICP has asked that the Agreement be amended to better reflect the realities of the current industrial park market, to facilitate the sale of land within the Interstate Commerce Park to Lakeside and enable it to revise its price structure to be competitive with other industrial parks.

In support of its request for an amendment to the Agreement ICP presents a case that, despite aggressive marketing, absorption of the land in the Interstate Commerce Park has been less than anticipated when the Agreement was executed. ICP argues that the current terms of the Agreement do not allow it to be competitive in the current industrial market. The current base price (\$1.66/sq ft) and special assessments (\$.86/sq ft) total \$2.52 per square foot. The costs of platting, commissions and other miscellaneous holding costs (closing and real estate transfer fees) increases the costs over \$3.00 per square foot. The price of comparable industrial land being sold is between \$2.50-3.00 per square foot. Even using the high end of this price range provides no return to the developer. Additionally ICP states that, given current industrial park market conditions, the remaining term of the Agreement does not provide sufficient time to absorb the remaining acreage. This statement is supported by the fact that 38.79 acres of the original 59 acres remain to be purchased by ICP and the Agreement expires on July 31, 2016.

In order to facilitate the sale of 10.92 acres to Lakeside and retain this business expansion within the City of Madison and to enable ICP to competitively price and market the remaining lots within the Interstate Industrial Park, the parties have negotiated the following terms for a Second Amendment to the Agreement:

1. The term of the Agreement shall be extended three (3) years and expire on July 31, 2019.
2. The base price for the remaining acreage to be purchase from the City in the Interstate Commerce Park will be reset to \$40,000 per gross acre. The base price shall escalate at 3% beginning on August 1, 2015 and on August 1<sup>st</sup> of each subsequent year throughout the term of the Agreement
3. ICP will be required to purchase all of the remaining gross acres by July 31, 2019.

The Interstate Commerce Park is well positioned in location and amenities to be competitive in the current

industrial park market. It is strategically located with interstate visibility and State highway access, is located near the Dane County Regional Airport and is adjacent to other lands that are zoned and being developed as industrial parks. However the current base price per acre when coupled with the Special Assessments for public improvements and the remaining term of the Agreement presents serious impediments to the success of the Interstate Commerce Park. The proposed amendment to the Agreement will facilitate the sale of land to Lakeside and allow ICP to price the remaining land competitively in the current market for industrial land to attract other users.

NOW THEREFORE BE IT RESOLVED that the Common Council authorizes the execution of a "Second Amendment to the Agreement to Purchase and Undertake Development of the Interstate Commerce Park" (the "Agreement") between the City of Madison (the "City") and Interstate Commerce Park, Inc. ("ICP") and Barbara J. Hoel, dated November 1, 2004, as amended in the First Amendment to the Agreement executed between the parties on September 10, 2007, pursuant to the following terms and conditions:

1. The first Paragraph of Paragraph 2.(c) of the Agreement, as amended, is hereby deleted in its entirety and replaced with the following:

"ICP shall acquire the Property in phases commencing from the date that ICP has the ability to obtain a building permit, based upon public street, sewer and water being available for all of the first phase which has been determined and agreed to by the parties as August 1, 2006 (the "Start Date") to July 31, 2019. Each phase that ICP acquires shall contain a minimum of 5 gross acres (including lands dedicated to the public), whenever public infrastructure improvements are to be constructed by the City under section 2.(d) of the Agreement, except a phase may consist of any amount of acreage provided that any lot(s) within said phase is/are served by existing public street, sewer and water. ICP shall acquire the remaining acreage to be purchased in the Property at a base price of \$40,000 per gross acre, prorated in the case of a partial acre. The base price per gross acre shall escalate by three per cent (3%) each year upon each anniversary of the Start Date throughout the term of the Agreement. (see Exhibit D: Purchase Price Schedule attached hereto and incorporated herein). ICP shall purchase all of the approximately 59 gross acres by July 31, 2019."

2. The "Exhibit D: Purchase Price Schedule" of the Agreement is hereby deleted in its entirety and replaced with the following:

**EXHIBIT D: Purchase Price Schedule**

Base Price:	\$40,000 per gross acre
Base Price Escalator:	3% per year
Start Date:	August 1, 2006
Period beginning:	
August 1, 2014	\$40,000
August 1, 2015	\$41,200
August 1, 2016	\$42,436
August 1, 2017	\$43,709
August 1, 2018	\$45,020

3. Terms used in this Amendment, but not otherwise defined herein, shall have the meanings ascribed to them in the Agreement.

4. This Amendment shall be binding upon the City, ICP and Hoel, and their respective successors and assigns.

5. All other terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflicts or inconsistencies between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment shall control to the extent of such conflicts or inconsistencies.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute, deliver, accept and record any and all documents and take such other actions as shall be necessary or desirable to accomplish the purpose of this resolution in a form approved by the City Attorney.