Legislation Details (With Text)

File #:	45921	**Version:**	1	**Name:**	11239 CIC PSA Bird View LLC Vogel
Type:	Resolution			**Status:**	Passed
File created:	1/31/2017			**In control:**	BOARD OF ESTIMATES (ended 4/2017)
On agenda:	2/28/2017			**Final action:**	2/28/2017
Enactment date:	3/2/2017			**Enactment #:**	RES-17-00143

Title: Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Bird View LLC, or its assigns, for the Purchase of Property located in the BioAg Gateway.

Sponsors: Denise DeMarb

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
2/28/2017	1	COMMON COUNCIL	Adopt	Pass
2/13/2017	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
2/7/2017	1	COMMON COUNCIL	Refer	Pass
1/31/2017	1	Economic Development Division	Referred for Introduction	

Fiscal Note

The proposed resolution authorizes a sale between the City of Madison and Bird View LLC or its assigns for a 121,209 square foot lot situated in the City-owned BioAg Gateway. The total Purchase Price is $339,385, subject to a Completion Guaranty in the amount of $31,385 and a Jobs Guaranty of $100,000. At Closing, Bird View LLC will pay the City $208,000 towards the Purchase Price. In the event the conditions of the two guaranties are not met, then Bird View LLC will pay the City the aforementioned amounts per the timing described below. Proceeds from the sale will be distributed to the General Land Acquisition Fund (account no. 14006010-48110-00000). There are no outstanding special assessments in BioAg Gateway. Roughly $1,366 of sale proceeds will go to pay title, estimated storm water bills and closing costs. No broker fee is involved with this deal. The remaining net proceeds of $206,634 at Closing will be credited to the General Land Acquisition Fund, as well as any future payments in case the conditions of the Jobs Guaranty or Completion Guaranty are not met.

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Bird View LLC, or its assigns, for the Purchase of Property located in the BioAg Gateway.

Body

WHEREAS, Vogel Bros. Building Company (“Vogel Bros.”) is seeking to purchase approximately 121,000 square feet of City owned land in the BioAg Gateway for constructing a corporate headquarters (the “Property”); and

WHEREAS, Vogel Bros. intends to create or retain twenty-three full time equivalent jobs on the Property; and

WHEREAS, the terms of the purchase and sale agreement will include guarantees for completion and job creation/retention together with penalties for non-compliance.

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 (“Seller”) and Bird View LLC and/or its assigns to an affiliate entity (“Buyer”), for the purchase of the Property on substantially the following terms and conditions:

1. Property. The boundaries for the Property shall be mutually agreed upon by Buyer and Seller within thirty (30) days after the Effective Date (defined below) and such boundaries shall be memorialized as the final legal description for the Property, at the sole expense of Buyer, in a certified survey map recorded on or before closing in form reasonably satisfactory to Buyer (the "CSM"). The approximate area of the Property is 121,209 square feet (“Approximate Property Area”). The Building Land and Zoning Land as defined below in Paragraph 5 total the Property.

2. Conveyance. Buyer shall purchase, and 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 free and clear from all liens and encumbrances excepting the following: municipal and zoning ordinances and the "Permitted Exceptions" (defined below).

3. Project. Buyer intends to develop a corporate headquarters (the "Project") on the Property and create or retain twenty-three (23) full time equivalent employees ("FTEs") as more fully described below. The FTEs must be paid a living wage as that term is defined in Madison General Ordinance 4.20, each fiscal year for four fiscal years as described below in Paragraph 5 (ii).

4. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by Seller or Buyer, as indicated on the signature page.

5. Purchase Price. The purchase price for Seller’s interest in the Property (the "Purchase Price") shall be the sale price of the portion of the Property attributable to the Building Land plus the sale price of the portion of the Property attributable to the Zoning Land as described below for a total Purchase Price of Three Hundred Thirty-Nine Thousand Three Hundred Eighty-Five and 20/100ths Dollars ($339,385.20). Three Hundred and Eight Thousand Dollars ($308,000) of the Purchase Price shall be attributable to that portion of the Property known as the "Building Land" ($2.80 per square foot multiplied by the number of square feet (110,000). In addition, the City will be requiring that the Buyer purchase 11,209 square feet of land to satisfy municipal zoning requirements (“Zoning Land”) for a price of Thirty One Thousand Three Hundred Eighty Five and 20/100 Dollars ($31,385.20) ($2.80 per square foot multiplied by the square footage of Zoning Land). In the event the square footage of the Property in the Survey as defined in Paragraph 10 below, is different than the Approximate Property Area, then the Purchase Price will be adjusted by the incremental difference from the Approximate Property Area and the actual square footage multiplied by $2.80 per square foot. Two Hundred Eight Thousand Dollars ($208,000) of the Purchase Price shall be payable in cash at Closing, subject to the adjustments and prorations provided herein. The remaining One Hundred Thirty-One Thousand Three Hundred Eighty Five and 20/100 Dollars ($131,385.20) of the Purchase Price shall be deferred pursuant to the terms of the Guarantees (defined below).

   Vogel Bros. Building Co. (“Vogel Bros.”) shall execute a guaranty at Closing agreeing to pay the City the deferred portion of the Purchase Price equal to an aggregate sum of One Hundred Thirty One Thousand Three Hundred Eighty Five and 20/100 Dollars ($131,385.20) (the "Guaranty Amount") in the event Buyer fails to meet two separate obligations (together, the "Conditions") described as follows (together the “Guarantees”):

   (i) Completion Guaranty - If completion of the Project has not occurred on or before December 31, 2017 (the "Completion Date"), then Vogel Bros. will owe the City a portion of the deferred Purchase Price equal to Thirty One Thousand Three Hundred Eighty Five and 20/100 Dollars ($31,385.20) (the “Completion Guaranty”). Project completion shall be determined by the issuance of a certificate of

occupancy by the City dated on or before the Completion Date; and

(ii) Jobs Guaranty - If Vogel Bros. has not created or retained twenty-three FTEs on the Property in each of the four fiscal years following the Completion Date of the Project (as measured annually on a fiscal basis between January 1, 2018 through December 31, 2021), then Vogel Bros. will owe the City a portion of the deferred Purchase Price equal to Twenty Five Thousand Dollars ($25,000) for each fiscal year of non-compliance for a total payment of One Hundred Thousand Dollars ($100,000) (the “Jobs Guaranty”). For example, the first fiscal year of compliance is January 1, 2018 through December 31, 2018.

For each fiscal year of compliance with this paragraph, the Jobs Guaranty shall be reduced by Twenty Five Thousand Dollars ($25,000) (the “Reductions”). The Jobs Guaranty less any Reductions earned equals the (“Adjusted Jobs Guaranty”) if applicable. The requirement to create or retain FTEs, and verification of their being paid a living wage, shall be evidenced by an annual certified statement (the “Certification”) submitted by Buyer to Seller and may be verified by an on-site audit by the City of Madison (the “Audit”). Should the Certification and the Audit be found inadequate to verify the terms of this paragraph in any given year, the Reduction for that year shall not be effective. The City shall provide a written explanation of its decision.

In the event the Completion Guaranty condition is not satisfied by the Completion Date, Vogel Bros. shall pay the Completion Guaranty amount to the City on or before March 1, 2018 (the "Completion Guaranty Payment Date"). In the event the Job Guaranty conditions are not fully satisfied, Vogel Bros. shall pay the Jobs Guaranty amount, or Adjusted Jobs Guaranty amount as applicable, to the City on or before September 1, 2022 (the "Job Guaranty Payment Date"). In advance of executing the Guarantees, Vogel Bros. shall make available current financial information such as its 2014, 2015 and 2016 federal income tax forms and current bank statements sufficient for the City, in the City’s sole discretion, to determine whether Vogel Bros. has the financial resources to support the Guarantees.

The Job Guaranty amount, or Adjusted Job Guaranty amount, (if any) shall be the one-time and final payment due on the Job Guaranty Payment Date. The Completion Guaranty amount owed (if any) shall be the one-time and final payment due on the Completion Guaranty Payment Date. The Guarantees shall be satisfied and cancelled and the Purchase Price shall be considered paid in full upon fulfillment of the Conditions or payment of the Guaranty Amount or Adjusted Job Guaranty Amount, as applicable.

6. Earnest Money. Within ten (10) business days of the Effective Date, Buyer shall deposit into escrow with the Title Company (as defined in Paragraph 14) Ten Thousand Dollars ($10,000) as "Earnest Money," which will be non-refundable except as otherwise provided in Paragraphs 9, 10 and 14 of this LOI and the corresponding provisions of the Agreement, to be applied toward the Purchase Price at Closing.

7. Limited Representations and Warranties; AS-IS Condition. The Agreement shall provide warranties of title, authority, and a warranty that Seller has no notice or knowledge of environmental contamination. In all other respects, 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 Seller, or any other persons for Seller, in entering into the Agreement or in closing the transaction described herein. 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 Buyer’s contingencies, as generally described in Paragraph 9. In closing and completing the transaction, Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of Seller or its agents or employees.

8. Delivery of Documents. Within ten (10) days of the Effective Date and throughout Buyer's Contingency Period as described in Paragraph 9, Seller will reproduce at Seller's expense and send to Buyer at Buyer's office copies of all environmental studies, reports, permits, applications and remediation plans or assessments of the Property and correspondence between Seller and any regulatory authority, and all studies, reports, plans or assessments related to the condition of the Property in Seller's possession or control.

9. Buyer Contingencies. Buyer shall have one hundred twenty (120) days from the Effective Date (the "Buyer's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate the Agreement if any of Buyer's contingencies are unacceptable, in Buyer's sole discretion. If Buyer timely terminates the Agreement as a result of any of Buyer's contingencies, the Earnest Money shall be promptly refunded to Buyer and the Agreement shall be null and void.

   a. Land Use Approvals. Buyer securing all land use approvals for the development of the Project. Such approvals may include, but not be limited to: approval by all zoning, building, engineering, traffic and similar approvals and permits necessary or required to complete the Project.

   b. Project Financing. Buyer securing financing acceptable to Buyer for the construction of the Project.

   c. Subdivision. Buyer securing approval for subdivision of the Property acceptable to Seller via a CSM, to be recorded at or prior to Closing.

   d. Inspections and Testing. Buyer obtaining various inspections and testing of the Property. Buyer, at its sole expense, may obtain an inspection of the Property and all 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 Buyer. In no event shall Seller be required to cure any matter to which Buyer objects relating to the condition of the Property or any improvements located thereon.

   e. Survey and Title. Buyer reviewing and agreeing to accept the condition of title to the Property as revealed by the title commitment to be delivered to Buyer under Paragraph 14.

   Buyer's Contingency Period may be extended for an additional sixty (60) days by written notice from Buyer to Seller prior to the expiration of Buyer's Contingency Period. In consideration, the Buyer shall deposit an additional Five Thousand Dollar ($5,000) Earnest Money deposit with the Title Company.

10. Survey. Buyer shall provide to Seller, at Buyer's expense, within sixty (60) days of the Effective Date, an ALTA/ACSM Land Title Survey of the Property that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective November 1, 2016 (the "Survey") in order to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of Buyer and Title Company providing the title insurance described in Paragraph 14. The Survey shall show the location of all exceptions shown by the title commitment that are capable of being shown on a survey.

11. Access to Property. Buyer and Buyer's authorized agents, engineers, consultants and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing anticipated by Buyer's contingency contemplated in Paragraph 9.d. including, but not limited to, a Phase 1 or 2 environmental assessment of the Property at reasonable times with at least twenty-four (24) hour notice to Seller. Buyer will repair all damages caused by its inspections, at Buyer's cost, so that the condition of the Property is returned to as good or better condition as existed prior to the inspection.

12. Indemnification. During the period of the Agreement, Buyer and Buyer's authorized agents, engineers, consultants and contractors shall be liable to and shall agree to indemnify, defend and hold harmless Seller, and its officers, officials, agents, and employees against all loss or expense (including liability costs and reasonable attorney's fees) by reason of any claim or suit, or of liability imposed by law upon Seller or its officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to the Property, including loss of use thereof, to the extent arising from, in connection with, caused by or resulting from the acts or omissions of Buyer and/or its authorized agents, engineers, consultants and contractors, and all of their and Buyer's officers, agents, employees, assigns, guests, invitees, licensees, contractors or subcontractors, in the performance of any inspections or testing of the Property; whether caused by or contributed to by the negligence of the Seller, its officers, officials, agents, or employees. The terms of this paragraph shall remain in effect after termination of the Agreement.

13. Insurance. During the period of the Agreement, Buyer and Buyer's authorized agents, engineers, consultants and contractors shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by Seller's risk manager: bodily injury, death and property damage of $1,000,000 per occurrence. The policy or policies shall name Seller as an additional insured. As evidence of this coverage, Buyer and Buyer's authorized agents, engineers, consultants and contractors shall furnish to Seller a certificate of insurance on a form provided by Seller prior to entering on the Property to perform any inspections or testing as provided herein. If the insurance coverage required above expires during the Agreement, then Buyer shall provide a renewal certificate to the Seller.

14. Title Insurance. Buyer shall obtain, at Seller's expense, within fifteen (15) days of the Effective Date a commitment from First American Title Company (the "Title Company"), 10 West Mifflin Street #302, Madison, WI to issue a 2006 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 Buyer, to be in the condition called for in the Agreement, and further subject only to liens and to any exceptions accepted in writing by Buyer ("Permitted Exceptions"). Buyer shall notify Seller of any valid objection to title, in writing, within fifteen (15) days of receipt of the title commitment from Seller. Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections. Should Seller be unable or unwilling to remove the objections, Buyer shall then have the option, exercisable within thirty (30) days of Buyer's delivery of its original notice of objection to title, to either (a) terminate the Agreement by delivery of written notice to Seller, in which case the Agreement shall be null and void and Buyer shall be entitled to a return of the Earnest Money, or (b) waive such objections to title. Buyer's failure to timely deliver written notice of termination under Section (a) of the preceding sentence shall be deemed to be waiver of Buyer's objections to title. Between the effective date of the commitment and Closing, Seller shall not place any additional encumbrances against the Property (except for such encumbrances that Seller shall remove at Closing).

15. Closing.

a. The consummation of the purchase and sale of the Property, and recordation of the Deed conveying the Property to Buyer free and clear from all liens and encumbrances, excepting municipal and zoning ordinances and the Permitted Exceptions, shall occur within fifteen (15) days of the expiration, or earlier waiver, of Buyer's Contingency Period but in no event later than September 8, 2017 ("Closing").

b. Buyer shall pay all recording/filing fees except that 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.

c. The Buyer shall be responsible for all real estate taxes with respect to the Property after the Closing date.

d. Buyer shall pay all costs and expenses related to the CSM and the Survey.

e. Buyer shall be responsible for any and all special assessments, area assessments, interceptor charges or any other charges levied or payable to any municipality or utility with regard to the Property as of the date of Closing.

f. Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with conveyance of the Property.

g. Buyer shall pay one-half, and Seller shall pay the other half of any closing escrow fees charged by the Title Company to facilitate Closing. All other closing costs shall be prorated between Buyer and Seller as is customary for commercial real estate transactions in the City of Madison, Wisconsin.

16. Cooperation. The Agreement shall also provide that:

a. Seller and Buyer each will at any time, or from time to time upon written request, sign and deliver such other documents as may be reasonably requested, necessary or appropriate to give full effect to the terms of the Agreement, which documents may be approved by the City of Madison Common Council.

b. Seller will cooperate with Buyer in seeking federal, State, County and other funds to support the "Project" including, but not limited to, timely cooperation in securing a grants from Wisconsin Economic Development Corporation's Business and Community Assistance programs.

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

18. Living Wage (MGO 4.20). Buyer shall comply with Madison General Ordinance 4.20 that requires Developer to provide a living wage.

19. Accessibility (MGO 39.05). Buyer shall submit a written assurance of compliance with Madison General Ordinance 39.05.

20. Equal Opportunity. Buyer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.

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.