Legislation Details (With Text)

File #:	60226	**Version:** 4	**Name:**	12049 TID 42 Budget Amendment, Stoppel PSA
Type:	Resolution		**Status:**	Passed
File created:	4/14/2020		**In control:**	Economic Development Division
On agenda:	5/5/2020		**Final action:**	5/5/2020
Enactment date:	5/12/2020		**Enactment #:**	RES-20-00371

Title: SECOND SUBSTITUTE - Amending the 2020 Economic Development Division Budget by $1,260,000 and authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Stopple Revocable Trust for the City's acquisition of the property located at 1810 South Park Street for land banking purposes. (14th A.D.)

Sponsors: Sheri Carter

Indexes:

Code sections:

Attachments: 1. 12049 Resolution Exhibit A.pdf, 2. 12049 Resolution Exhibit B.pdf, 3. 60226 v1.pdf, 4. V2 FILE ID 60226.pdf, 5. 60226 v3.pdf

Date	Ver.	Action By	Action	Result
5/5/2020	3	COMMON COUNCIL	Adopt the following Amendment(s) to the Substitute	Pass
5/5/2020	3	COMMON COUNCIL	Adopt - 15 Votes Required	Pass
4/28/2020	2	FINANCE COMMITTEE		
4/21/2020	1	COMMON COUNCIL	Refer	Pass
4/14/2020	1	Economic Development Division	Referred for Introduction	

Fiscal Note

The proposed resolution authorizes amending EDD's Land Banking capital program in the amount of $1.26 million for the acquisition of property located at 1810 South Park Street. The estimated acquisition cost for this parcel is $1,200,000 for the property plus $40,000 in additional real estate costs for environmental site assessment, title work, and miscellaneous closing costs for a total amount of $1,240,000. In addition, $20,000 is added to the 2020 Economic Development Division Budget to pay for holding costs of the property for the remainder of the year.

Funding for the purchase and holding costs of the property will be in the form of TIF proceeds, funded by TID #42. The use of TIF proceeds from TID #42 will require a transfer of incremental revenues from TID #39, whereby TID #39 becomes a donor TID to TID #42. The use and transfer for such proceeds within the TIF districts require approval from the TIF Joint Review Board.

Title

SECOND SUBSTITUTE - Amending the 2020 Economic Development Division Budget by $1,260,000 and authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Stopple Revocable Trust for the City's acquisition of the property located at 1810 South Park Street for land banking purposes. (14th A.D.)

Body

WHEREAS, Stopple Revocable Trust ("Seller") is the owner of the property containing 72,311 square feet of land and 28,053 square feet of commercial office and warehouse space in five buildings, located at 1810 South Park Street and legally described on Exhibit A and depicted on Exhibit B, attached hereto ("Property"); and

WHEREAS, the City of Madison ("City") desires to purchase the Property for land banking purposes that are being contemplated in the updated South Madison Plan; and

WHEREAS, the Mayor directed City Real Estate staff to pursue the purchase of suitable properties in the South Park Street corridor; and

WHEREAS, the City's acquisition of the Property would provide expanded opportunities for the City to guide future housing and commercial development; and

WHEREAS, the Seller agrees, by virtue of an executed Purchase and Sale Agreement ("Agreement"), to sell the Property to the City for a purchase price of $1,200,000, which was negotiated based on an appraisal approved by the City's Office of Real Estate Services.

NOW, THEREFORE, BE IT RESOLVED that the City's Common Council hereby amends the 2020 Economic Development Division Capital Budget by $1,260,000 and authorizes the City's execution, as Buyer, of the Agreement with the Seller for the purchase of the Property, subject to the following terms and conditions:

1. Property. The real property located at 1810 South Park Street, Madison, Wisconsin, as legally described on the attached Exhibit A, including the building, improvements, fixtures, supplies relating to the mechanical, electrical and plumbing systems located thereon and all appurtenances thereto (collectively referred to as the "Property").

2. Effective Date. The "Effective Date" shall be the date the City executes the Agreement.

3. Conveyance. The Buyer shall purchase and the Seller shall sell and convey by Special Warranty Deed (the "Deed") fee simple title to the Property free and clear from all liens and encumbrances excepting the following: municipal and zoning ordinances, and the "Permitted Exceptions" (defined below).

4. Purchase price. The total purchase price for the Seller's interest in the property (the "purchase price") shall be one million two hundred thousand dollars ($1,200,000). The purchase price shall be payable in cash at closing, subject to the adjustments and prorations herein provided. In the event the Property requires remediation by the Wisconsin Department of Natural Resources, the purchase price shall be reduced by an amount equal to an estimate provided by a qualified contractor experienced in performing such work.

5. Earnest Money. Within ten (10) business days of the Effective Date, the Buyer shall deposit with the Title Company, as defined below, Twenty-Five Thousand Dollars ($25,000) as "Earnest Money", which will be non-refundable except that the Earnest Money shall be forfeited and returned to the Buyer as provided in Paragraphs 8, or 13, or if Seller defaults on the terms of the Agreement. The Earnest Money shall be applied toward the Purchase Price at Closing in accordance with Paragraph 4.

6. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Buyer's Contingency Period as described in Paragraph 8, the Seller will reproduce at the Seller's expense and send to the Buyer at the Buyer's office copies of:

   a. all environmental studies, reports, permits, applications and remediation plans or assessments of 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 in the Seller's possession or control;

   b. all building plans, floor plans, site plans, surveys, CAD files, civil plans, structural studies, MEP

(mechanical, electrical or plumbing) reports, or assessments related to the condition of the improvements on the Property in the Seller's possession or control;

c. all lease agreements and service contracts.

7. Limited Representations and Warranties; AS-IS Condition. Seller has the authority to enter into this Agreement, and warrants that it 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 8. 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, other than those set forth in this Paragraph 7.

8. 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. During the Buyer's Contingency Period, the Buyer may conduct any testing needed for due diligence as outlined in Section 8(a) below. If the Buyer timely terminates the Agreement as a result of any of the Buyer's Contingencies, the Earnest Money shall be promptly refunded by the Title Company 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 and 2 environmental site assessments of the Property and related environmental, soil and groundwater 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. City Budget Authorization. The Buyer obtaining budget authorization from the Common Council of the City of Madison for the purchase of the Property.

9. Access to Property.

a. Inspections and Testing. 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 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.

b. Walk-Through. The Buyer will be permitted to enter the building located on the Property several times prior to entering into the Agreement and during Buyer's Contingency Period, at times agreed to by the Seller, for the purpose of familiarizing Buyer with the facilities and

determining usefulness of the office space for the Buyer's needs. Buyer will provide Seller with notice before entering the building.

10. Insurance. Any of Buyer's authorized agents, engineers, consultants, appraisers and contractors entering the Property or Building shall carry commercial general liability insurance naming the Seller, its members, managers, agents and employees as additional insureds, with a minimum limit of $1,000,000 per occurrence and annual aggregate. These policies shall provide Seller with thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of the Agreement. As evidence of this coverage, any of Buyer's authorized agents, engineers, consultants, appraisers and contractors shall furnish Seller with a certificate of insurance on a form approved by Seller, and, if requested in writing by the Seller, any of Buyer's authorized agents, engineers, consultants, appraisers and contractors shall also provide copies of additional insured endorsements or policy to Seller prior to entering the Property or Building. If the coverage required above expires with the Agreement is in effect, Buyer and any of its authorized agents, engineers, consultants, appraisers and contractors shall provide a renewal certificate to Seller for approval. The obligations of this paragraph shall terminate at Closing.

11. 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, 2016 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 13 shall be at the sole cost and expense of the Buyer.

12. Leasing/Service Contracts.

a. New Leases/Service Contracts. The Seller shall not enter into any new lease, service contract or rental agreement for the Property, or any portion thereof, during the Buyer's Contingency Period and through the date of Closing, without the prior written consent of the Buyer.

b. Existing Leases/Service Contracts. Seller shall assign all current leases to the Buyer as of the Closing. Any service contract shall be terminated unless Buyer agrees to an assignment of the service contract.

13. Title Insurance. Seller shall obtain, at the Seller's expense, a title 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 the expiration of Buyer's Contingency Period. 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.

14. Closing.

a. 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.

b. Closing shall occur on or before September 18, 2020, unless otherwise agreed to in

writing by both the Buyer and Seller.

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.

Real estate taxes for the Property shall be prorated between the Buyer and Seller as of the Date of Closing based upon the latest known assessment and latest known mill rate. At Closing, Seller shall credit Buyer for any unpaid 2019 real estate taxes and prorated 2020 real estate taxes for the Property. If at Closing, the Property has not been assessed for 2020, then the proration shall be based on the 2019 assessed value and the last known mill rate. The 2020 credit is based on the number of days in 2020 prior to the Closing date divided by 365 days times the product of the 2019 assessed value and the last known mill rate.

d. 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. The Buyer shall be responsible for all such expenses with respect to the Property payable after the Closing date.

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

f. The Seller shall pay any and all broker commissions or fees due in connection with the sale or Lease Back of the Property.

g. The Seller shall leave any remaining supplies relating to the building's mechanical, electrical and plumbing systems.

h. The Seller will assign over any remaining warranties relating to the Property to Buyer.

i. The Buyer shall pay all closing costs and any closing escrow fees charged by the Title Company to facilitate Closing.

j. Joint Review Board Authorization. The Buyer must obtain approval of a Project Plan Amendment for Tax Incremental Financing Districts 42 and 39 in conformity with 66.1105, Wis. Stat. in advance

15. Default. If the Seller defaults in the full and timely performance of any of its obligations hereunder, the Buyer shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate the Agreement or seek specific performance. If the Agreement is terminated due to the default of the Seller the Earnest Money shall be promptly refunded to the Buyer. If the Buyer defaults in the full and timely performance of any of its obligations hereunder, the Seller shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to retain all Earnest Money as liquidated damages, the right to terminate this Agreement or seek specific performance.

16. Entire Agreement. The Agreement contains the entire agreement between the Seller and the Buyer and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby. The Agreement may be amended

only by a further written document signed by each of the parties.

17. Successors and Assigns. The provisions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.

BE IT FURTHER RESOLVED that to accomplish this purchase, the “Land Banking” line item (Project #12640) of the 2020 Economic Development Division Capital Budget shall be increased by $1,260,000 to be funded through cash transferred from TID #42 (Project #99005); and,

BE IT FURTHER RESOLVED that the source of $1,260,000 of TID #42 (Project #99005) cash shall be a donation from TID #39 (Project #99004) subject to future approval by the Common Council and TIF Joint Review Board; and,

BE IT FURTHER RESOLVED that $40,000 of the aforementioned $1,260,000 shall be used for due diligence and closing expenses prior to the purchase of the Property (environmental site assessment, title work, closing costs, etc.) and that $20,000 of the aforementioned $1,260,000 shall be used to cover holding costs for the Property for the remainder of the year following purchase; and,

BE IT FURTHER RESOLVED, this acquisition shall be for the express purpose of advancing affordable housing, business creation and assistance, and retail retention;

BE IT FURTHER RESOLVED, the end use of this parcel shall be aligned with the completed South Madison Plan;

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to sign, accept, and record any and all documents and legal instruments required to complete the transactions contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney.