



Legislation Text

File #: 19995, **Version:** 1

Fiscal Note

Total costs for purchase, taxes, closing, site analysis and redevelopment plan are estimated at \$3,577,000. Funds are available in the 2010 PCED adopted capital budget, Project No. 23, "Land Banking" (Account No. 810638). Funding is General Obligation borrowing, but the debt repayment may be chargeable to TID#37 if sufficient increment is available from future development within the district.

Title

Authorizing the execution of a Real Estate Contract with M&I Regional Properties, LLC for the purchase by the City of properties located at 2507, 2504 and 2340 Winnebago Street (Union Corners) and authorizing the use of Land Banking Funds for the acquisition.

Body

PREAMBLE

The Union Corners area on East Washington Avenue was the site of a proposed mixed-use development project (the "Union Corners Project"). The developer had assembled the land for the Union Corners Project and, after pursuing an intensive public participation process, received land use approvals for the first phase of the proposed project. The approved project included commercial, retail and residential elements and was envisioned to be developed in phases. The City committed TIF financing for the first phase of the Union Corners Project and made substantial public improvements on the site including a traffic circle and an extension of Winnebago Street. The recession in the housing and commercial real estate markets stalled the project. Due to the inability to proceed with the project, the developer turned the ownership of the land assembled for the Union Corners Project over to M&I Regional Properties, LLC ("M&I"). M&I has approached the City to acquire three parcels located at 2507, 2504 and 2340 Winnebago Street (the "Properties") within the Union Corners Project. The Properties total 497,191 square feet or 11.41 acres. The Office of Real Estate Services has negotiated terms with M&I for the acquisition of these parcels. The purchase price is supported by an appraisal obtained by the City.

The primary reason to acquire the Properties is to preserve, to the fullest extent possible, the principles of coherent urban infill redevelopment that were present in the previous plans:

- Mixed-use including residential (owner and rental), commercial, and retail opportunities;
- Sustainable development;
- Walkability;
- Connectivity to the regional transportation network (vehicular, transit, pedestrian, bicycling);
- A well-defined open space plan that provides for unique storm water management options while also providing spaces for use by the residents of and visitors to the area.

The purchase price of the Properties is below market price and, following the completion of a redevelopment plan, the City will sell or transfer the Properties for redevelopment at market price, resulting in uses that are largely taxable.

The adopted 2010 Capital Budget provides funding to purchase and stabilize developable parcels of land. Priority is to be given to parcels for which a development plan exists or special area plan has been approved, but no development is forthcoming due to overall economic conditions or the financial condition of the developer, thereby making the parcels available at a below market price. Funds used for this purpose will be reimbursed through subsequent sale or ground lease of the parcels as part of the redevelopment plan or plan

implementation process. Any parcels purchased by the City using these funds are to be sold or transferred at market price. Upon sale by the City, the parcels are expected to remain taxable. As further provided in the budget language, the Department of Planning and Community and Economic Development developed implementation guidelines for the use of Land Banking Funds. The Land Banking Fund Guidelines (attached) were approved by the Economic Development Committee on February 3, 2010. The acquisition of the Properties is consistent with the adopted Capital Budget language and the Land Banking Fund Guidelines.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute a Real Estate Contract ("Contract") with M&I Regional Properties, LLC ("Seller") for the purchase by the City of Madison ("Buyer") of properties and improvements located at 2507, 2504 and 2340 Winnebago Street (collectively, the "Properties"), as legally described below and shown on the attached exhibit, on the following terms and conditions:

1. Purchase Price. The total purchase price for the Properties shall be Three Million Three Hundred Thousand and 00/100 Dollars \$3,300,000.00, payable in cash at closing, subject to the prorations and credits set forth in the Contract.
2. Title Insurance. Promptly after execution of the Contract by the parties (the "Effective Date"), Seller shall deliver to Buyer at Seller's expense a current commitment ("Commitment") for an ALTA owner's title insurance policy for the Properties from a title insurance company ("Title Company") licensed in Wisconsin to issue title insurance in the amount of the total purchase price upon the recording of proper documents, together with a gap endorsement. Buyer shall have until the later of thirty (30) days from the Effective Date or ten (10) days after receipt of Commitment to deliver to Seller any objection to a matter shown on Commitment which materially affects the Properties or Buyer's use of the Properties ("Title Objections"). Seller shall have fifteen (15) days after receipt of Buyer's Title Objections to notify Buyer what Seller will do to cure any Title Objection. If Seller elects not to cure one or more of the Title Objections or is unable to cure a Title Objection by the closing date, Buyer shall have the option to either terminate the Contract or close on the purchase of the Properties.

Notwithstanding anything to the contrary herein, the following matters shall be deemed "Permitted Exceptions" and Buyer shall have no right to object to any of said matters on Commitment: municipal and zoning ordinances and agreements entered under them, agreements with any municipality regarding the development of the Properties, building and use restrictions and covenants, and State and/or Federal statutes and regulations; recorded easements for the distribution of utility and municipal services; property taxes and special assessments levied in the year of closing and subsequent years; such other matters as disclosed by the Commitment and waived or deemed waived by Buyer.

At closing, Seller shall cause Title Company to issue a current ALTA owner's title insurance policy with a gap endorsement in the amount of the Purchase Price allocated to the Properties insuring Buyer as the fee simple owner of the Properties as of the date of recording the deed, subject to the Permitted Exceptions.

3. Inspection Contingency. Promptly after the Effective Date, Seller shall make available to Buyer any and all environmental studies, permits, applications, remediation plans or assessments of the Properties in Seller's possession or control. Buyer acknowledges that Seller has provided Buyer with a Phase I Environmental Site Assessment prepared for Seller on December 14, 2009 for the Properties. Buyer, at its sole expense, may obtain an inspection of all buildings and related improvements located on the Properties and/or a Phase I environmental assessment of the Properties. Buyer shall not have the right to conduct any sampling of the water, soil, air or building improvements without Seller's express prior written consent. Buyer shall have thirty (30) days from the Effective Date to terminate the Contract by written notice to Seller resulting from Buyer's objection to any matter shown in an inspection report or Phase I environmental assessment, which materially affects the Properties or any

improvements located thereon or Buyer's use of the Properties. If Buyer does not terminate the Contract within this period, then Buyer is deemed to have waived this inspection contingency and any right to object to the condition of the Properties or any improvements located thereon. In no event shall Seller be required to cure any matter to which the Buyer objects relating to the condition of the Properties or any improvements located thereon.

4. No Representations or Warranties; AS-IS Condition.

- a. Buyer is purchasing the Properties in "AS-IS, WHERE-IS" condition and "with all faults", and agrees that it relies upon no warranties, representations or statements by Seller, or any other persons for Seller, in entering into the Contract or in closing the transaction described therein, except for the express representations and warranties set forth in Contract. Buyer's closing on the acquisition of the Properties shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Properties and has waived or satisfied Buyer's survey, title and inspection contingencies set forth in Contract. In closing and completing this 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 except those expressly set forth in Contract.
- b. Except for the express representations and warranties set forth in Contract, Seller makes no warranties, representations or statements whatsoever, express or implied, concerning or relating to the Properties, including without limitation: the income or expenses of the Properties; zoning and building codes and other similar restrictions; availability or cost of utilities; the environmental condition of the Properties; the presence or absence of any hazardous substances, hazardous materials, petroleum, or any substances regulated by federal, state or local law in, on or under the Properties; compliance of the Properties with any law, regulation, ordinance or similar requirement, including without limitation the Americans with Disabilities Act; or the physical condition of the Properties or any improvements thereon. Buyer acknowledges that no agents, employees, brokers or other persons are authorized to make any representations or warranties for Seller.
- c. Buyer acknowledges and agrees that any personal property to be conveyed in this transaction from Seller to Buyer will be transferred by quit claim bill of sale, with no representation, warranty or guaranty, expressed or implied, regarding the condition of or the title to such personal, and Buyer further agrees to accept such personal property in its "AS-IS/WHERE IS" condition at closing.
- d. Buyer (and any party claiming through or under Buyer) hereby agrees that following the closing, Seller shall be fully and finally released from any and all claims or liabilities against the Seller relating to or arising on account of the condition of or title to the Properties, including without limitation, any matters specifically referenced in Contract.
- e. This Section 4(a) through (d) shall survive the closing of Contract.

5. Closing.

- a. Closing shall take place within twenty (20) days after expiration of all Buyer's contingencies set forth in Contract, at a location agreed to by the parties, or at such time and place as may be agreed to by the parties.
- b. Seller agrees to execute and deliver to Buyer at closing a Warranty Deed conveying the Properties to Buyer.

- c. 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 Properties to be in the condition called for by Contract.
 - d. Seller shall pay all real estate transfer taxes payable pursuant to Section 77.25, Wisconsin Statutes, if any.
6. Special Assessments. Any and all special assessments, area assessments, connection charges, interceptor charges or any other charges payable to any municipality or utility with regard to the Properties as of the date of closing shall be divided equally between the parties and paid at closing.
7. Taxes. All general real property taxes payable with respect to the Properties for the year of closing shall be prorated between Buyer and Seller as of the closing date. If the precise amount of taxes payable for the year of closing cannot be ascertained, proration shall be computed on the basis of taxes for the previous year.
8. Leases. Seller shall provide to Buyer copies of all leases that affect the Properties. All such leases shall be assigned to Buyer or terminated as of closing. All rents under such leases shall be pro-rated at closing.

BE IT FURTHER RESOLVED that funds for the acquisition and stabilization of the Properties are authorized from the City's Land Banking account for this acquisition as follows: Purchase Price-\$3,300,000, City portion of special assessments \$180,000, City portion of pro-rated real estate taxes \$35,000, \$60,000 for costs associated with a site review analysis and a redevelopment plan (including planning, market research, urban design, engineering, transportation engineering, and community engagement and outreach), and miscellaneous closing costs \$2,000.

BE IT STILL FURTHER RESOLVED that the disposal of the Properties shall be by direct sale or through a Request for Proposals process once the site review analysis and a redevelopment plan are completed.

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

Legal Descriptions

- 1) Lot 1, Certified Survey Map No. 11774 as recorded in Dane County Register of Deeds in Volume 72, Page 138 of Certified Surveys, City of Madison, Dane County, Wisconsin.

2507 Winnebago Street
251-0710-061-3428-4
- 2) Lot 2, Certified Survey Map No. 11774 as recorded in Dane County Register of Deeds in Volume 72, Page 138 of Certified Surveys, and Lot 1, Certified Survey Map No. 11835 as recorded in Dane County Register of Deeds in Volume 72, Page 247 of Certified Surveys, and vacated Sullivan Street and vacated Florence Street and vacated part of Winnebago Street per City of Madison Common Council Resolution Enactment No. RES-06-00599 as recorded on August 25, 2006 in Document No. 4228878, and vacated part of Milwaukee Street per City of Madison Common Council Resolution Enactment No. RES-06-00854 as recorded on November 14, 2006 in Document No. 4253854; City of Madison, Dane County, Wisconsin.

2504 Winnebago Street
251-061-3508-4

- 3) Lot 2, Certified Survey Map No. 11835 as recorded in Dane County Register of Deeds in Volume 72, Page 247 of Certified Surveys, City of Madison, Dane County, Wisconsin

2340 Winnebago Street
251-0710-064-2220-9