



## Legislation Text

**File #: 20863, Version: 1**

Funding of \$2,000,000 for the purchase of Brayton Lot was authorized in the Parking Utility 2007 adopted capital budget, but the authorization has not been subsequently reauthorized. This Resolution will, therefore, amend the Parking Utility 2011 adopted capital budget to provide funding of \$1,387,000 for acquisition and other associated costs for the purchase of the Brayton Lot site. The funding will be added to the existing Brayton Lot repaving project already included in the Parking Utility 2011 capital budget (Project No. 3, "Brayton Lot," Acc't No. 810658) as follows:

\$1,387,000 EP01-58110-810658 Land Acquisition Expense  
(\$1,387,000) EP01-79999-810658 Revenues-Parking Utility Reserves

Authorizing the execution of an Offer to Sell Real Estate with the State of Wisconsin for the purchase of four State-owned lots located at 302, 312, and 314 East Main Street and 21 South Butler Street for the expansion of the Brayton Parking Lot, a lease with the State of Wisconsin for spaces for its share-ride vans in the Parking Utility's downtown parking facilities and the amendment of the 2011 Parking Utility Capital Budget for the acquisition of the lots.

The City of Madison's First Settlement Neighborhood Master Plan (1995) identified Block 113 (the "Brayton Lot Block") as a strategic mixed-use redevelopment site. In 1998 the First Settlement Neighborhood Planning Committee (the "Planning Committee") established a subcommittee to explore ways that redevelopment on the Brayton Lot Block could be made compatible with the neighborhood and consistent with the Neighborhood Master Plan. In August 2001 the Planning Committee, based on the work of the subcommittee, issued a design and development framework for Brayton Lot Block which included providing a better development platform for redevelopment of that block and better parking opportunities for parkers.

The City of Madison's Parking Utility owns all but four lots on the Brayton Lot Block on which it operates its Brayton Lot parking facility (the "Brayton Lot"). The four lots, located at 302, 312, and 314 East Main Street and 21 South Butler Street (collectively the "Properties"), are owned by the State of Wisconsin (the "State"). The State currently uses the Properties to provide 44 parking spaces for employees and 30 spaces for its share-ride program vans. City ownership of the Properties is seen as critical to the redevelopment of the Brayton Lot Block. The current "L" shaped configuration of the City owned portion of the Brayton Lot Block is not efficient or cost effective for a below-grade structured parking facility. This type of parking facility is critical to the redevelopment of the Brayton Lot Block.

Over the past five years, the City has had discussions with the State concerning the acquisition of the Properties. In 2007 the Parking Utility had funds approved in its capital budget to acquire the Properties but the State withdrew its offer to sell the Properties. The State recently reopened negotiations with the City for the acquisition of the Properties.

The State Building Commission has approved the terms and executed an Offer to Sell Real Estate to sell the Properties to the City. The City would acquire the Properties to expand, on an interim basis, the existing Brayton Lot until such time as a below-grade parking structure is constructed to facilitate the redevelopment of the Brayton Lot Block. As a condition of sale, the Parking Utility will lease the State up to 30 parking spaces in the expanded Brayton Lot or in other Parking Utility downtown parking facilities for its share-ride vans. The purchase price is supported by appraisals obtained by the City and the State. Acquisition will require an amendment to the Parking Utility's 2011 Capital Budget. Funds are available from Parking Utility Reserves. The purchase will not impact the tax levy. The Offer is contingent upon Common Council approval.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute an Offer to Sell Real Estate ("Offer") with the State of Wisconsin ("Seller") for the purchase by the City of Madison ("Buyer") of four (4) lots owned by the Seller located at 302, 312, and 314 East Main Street and 21 South Butler Street (collectively the "Properties"), as legally described below and shown on the attached Exhibit A, on the following terms and conditions:

- 1.) Properties. Seller hereby agrees to convey to Buyer and Buyer hereby agrees to acquire from Seller the Properties and all improvements and fixtures located thereon and all appurtenances.
- 2.) Purchase Price. The purchase price for the Properties is One Million Three Hundred Eighty Thousand Dollars

and no/00 Dollars (\$1,380,000.00) (the "Purchase Price") and shall be paid in cash at closing, subject to closing prorations and credits.

- 3.) Parking Space Lease. At closing the parties shall execute a lease that will provide Seller with up to thirty (30) parking spaces for its share ride fleet within its downtown parking facilities owned and operated by Buyer, with the exception of the Buckeye Lot.
- 4.) Personal Property. Buyer acknowledges and agrees that no personal property will be conveyed in this transaction from Seller to Buyer.
- 5.) Seller's Representations and Warranties. Seller hereby makes the following representations and warranties in connection with Buyer's purchase of the Properties, and no others, express or implied, which representations and warranties shall be true as of the closing date hereof and shall survive the closing of this transaction for a period of one (1) year:
  - a.) Seller has the authority necessary to enter into this Offer and comply with Seller's obligations hereunder;
  - b.) There are no pending or, to Seller's knowledge, threatened condemnation or eminent domain proceedings which would affect the Properties;
  - c.) There are no undisclosed agreements between Seller and any other party which relate to the Properties;
  - d.) Until the closing date, the Properties will be maintained in substantially the same condition as it is in on the date of this Offer, subject to ordinary wear and tear and casualty damage; and
  - e.) There is no litigation pending or, to Seller's knowledge, threatened which would affect the Properties or the use thereof by Buyer.
- 6.) Contingencies.
  - a.) Buyer Acceptance Contingency. This Offer is contingent upon acceptance of its terms and conditions by the Common Council of the City of Madison within sixty (60) days of execution of this Offer by Seller (the "Acceptance Period"). If Buyer does not accept this Offer within the Acceptance Period this Offer shall be null and void.
  - b.) Title Contingency. Seller shall deliver or cause to be delivered to Buyer within ten (10) business days of the Effective Date a current commitment (the "Commitment") for an ALTA owner's title insurance policy for the Properties in the amount of the total purchase price issued by a title agent selected by Seller using a nationally recognized title insurance underwriter ("Title Company"), together with a gap endorsement and copies of the instruments listed in the schedule of exceptions in such Commitment. Buyer shall have ten (10) days after receipt of the Commitment to deliver to Seller in writing any objection to a matter shown on the Commitment which materially affects the Properties or Buyer's use of the Properties ("Title Objections"). If Buyer fails to deliver timely notice of Title Objections to Seller, Buyer shall be deemed to have fully accepted the Commitment and all matters disclosed therein. If Buyer timely delivers Title Objections, Seller shall have five (5) days after receipt of Buyer's objection notice to notify Buyer in writing what, if anything, Seller shall do to cure the Title Objections. Failure of Seller to respond within said period shall indicate that Seller elects not to cure the Title Objections. Seller shall have no obligation to cure any Title Objection or incur any expense with respect thereto. If Seller elects not to cure one or more of the Title Objections, Buyer shall have five (5) business days to deliver notice to Seller terminating this Offer and the parties shall have no further obligations hereunder except those provisions that expressly survive. If Seller pursues a cure and is unable to cure a Title Objection by the closing date, then Buyer shall have the option to either terminate this Offer and the parties shall have no further obligations hereunder except those provisions that expressly survive or close on the purchase of the Properties with no Purchase Price reduction, in which case Buyer is deemed to have accepted any uncured Title Objections and waived any rights against Seller relating thereto.

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 the Commitment:

  - i) 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;

- ii) recorded easements for the distribution of utility and municipal services;
- iii) property taxes and special assessments levied in the year of closing and subsequent years;
- iv) such other matters as disclosed by the Commitment and waived or deemed waived by Buyer pursuant to this Section 6.

At closing, Seller shall cause the Title Company to issue a current ALTA owner's title insurance policy in the amount of the Purchase Price of 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 ("Title Policy").

- c.) Environmental Contingency. Within ten (10) days of 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 for the Properties.

Buyer, at its sole expense, may obtain an inspection of the Properties 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 improvements without Seller's express prior written consent.

Buyer shall have forty five (45) days from Effective Date to terminate this Offer 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 this Offer hereunder, 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.

7.) No Representations or Warranties; AS-IS Condition.

- a.) Buyer is hereby 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 this Offer or in closing the transaction described herein, except for the express representations and warranties set forth in Section 5 above. 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 acceptance, title and inspection contingencies set forth in Section 6 above. 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 Section 5 above.

- b.) Except for the express representations and warranties set forth in Section 5 above, 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 (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 this Offer. This Section 7.(a.) through (c.) shall survive the closing of this Offer.

- 8.) Closing. The closing of this transaction shall take place within ten (10) days after expiration of all Buyer's contingencies set forth in this Offer, at the offices of Title Company, or at such other time and place as may be agreed upon by Buyer and Seller. Unless other contingencies are expressly granted in this Offer, Buyer's

contingencies include only the acceptance, title and inspection contingencies set forth in Section 6 above. At closing, Buyer shall deliver to Title Company wired funds or other immediately available funds in the amount of the Purchase Price, as adjusted any prorations and closing costs provided for herein, and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the State of Wisconsin or otherwise required by Title Company to issue Title Policy.

At closing, Seller shall deliver to Title Company a Quitclaim Deed conveying the Properties to Buyer, subject only to the exceptions permitted herein and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the State of Wisconsin or otherwise required by Title Company to issue Title Policy. All prorations required hereunder shall be computed as of the date of closing. Possession of the Properties shall be delivered to Buyer on the closing date. Buyer shall pay for recording the deed. Seller shall pay the title insurance premium for Title Policy to be issued to Buyer and gap endorsement charges and for 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 this Offer. Buyer shall pay for all other endorsement charges and the title insurance premium for any loan policy, including endorsement charges related thereto. All Title Company closing charges shall be shared equally by Seller and Buyer. All other closing costs, including without limitation transfer taxes and other recording fees, shall be allocated as customary in the State of Wisconsin.

- 9.) 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 and assessments payable for the year of closing cannot be ascertained, proration shall be computed on the basis of taxes and assessments on the Properties for the immediately preceding tax year.
- 10.) Special Assessments. Any and all special assessments, area assessments, connection charges, interceptor charges or any other charges due and payable to any municipality or utility with regard to the Properties as of the date of closing shall be paid by Seller at closing.
- 11.) Leases. Seller shall provide to Buyer copies of all leases that affect the Properties (collectively, the "Leases"). At any time prior to closing, Seller, in Seller's sole discretion, may terminate any or all of the Leases. All Leases that remain in effect on the closing date (collectively, the "Remaining Leases") shall be assigned to and assumed by Buyer as of the date of closing pursuant to a written instrument in form reasonably acceptable to Buyer and Seller (the "Assignment of Leases"). All rents under the Remaining Leases shall be prorated as of the date of closing.
- 12.) Casualty. If the Properties are damaged by fire or other casualty after Effective Date of this Offer but prior to the closing date, such that the cost to restore the Properties to their condition immediately prior to the casualty is in excess of five percent (5%) of Purchase Price, Buyer shall have the option to:
  - a.) proceed to close this transaction on the terms contained herein and receive an assignment of the insurance proceeds (or the right to receive the same, if they are not received before closing) payable to Seller as a result of the casualty; or
  - b.) terminate this Offer by written notice delivered to Seller within ten (10) days after Buyer receives notice of the casualty.

If the Properties are damaged by fire or other casualty prior to the closing date and the cost of restoration does not exceed five percent (5%) of Purchase Price, this Offer shall remain in full force and effect upon the terms stated herein and at closing Seller shall assign to Buyer the insurance proceeds (or the right to receive the same, if they are not received before closing) payable to Seller as a result of the casualty.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute a lease with Seller for parking spaces within the Parking Utility's downtown parking facilities for its share ride vans on the terms and conditions described on the attached Exhibit B.

BE IT STILL FURTHER RESOLVED that the 2011 Parking Utility Capital Budget, Project #3, "Brayton Lot", Account No. 810658, be amended by the addition of expenditure authorization of \$1,387,000.00 for the acquisition of the Properties funded with Parking Utility Reserves. The acquisition costs include the following: \$1,380,000 for the Purchase Price, \$5,000 for a Phase I Environmental Assessment, \$2,000 for miscellaneous closing costs including the City's portion of pro-rated real estate taxes, if any, recording and settlement fees.

BE IT FINALLY 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) Southwest 22 feet of the southeast 33 feet of Lot 5, the southwest 22 feet of Lot 6, all of Lot 9, and the southeast ½ of Lot 10, Block 113, Original Plat, City of Madison, Dane County, Wisconsin.

21 South Butler Street  
Tax Parcel No. 251-0709-133-2502-7

- 2) Southwest 110 feet of Lot 8, Block 113, Original Plat, City of Madison, Dane County, Wisconsin

302 East Main Street  
Tax Parcel No. 251-0709-133-2503-5

- 3) Northeast 22 feet of Lot 8, Block 113, Original Plat, City of Madison, Dane County, Wisconsin

312 East Main Street  
Tax Parcel No. 251-0709-133-2504-3

- 4) Southwest 22 feet of Lot 7, Block 113, Original Plat, City of Madison, Dane County, Wisconsin

314 East Main Street  
Tax Parcel No. 251-0709-133-2505-1