



Legislation Text

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Fiscal Note

This resolution authorizes the purchase of property for the proposed Central Park. The purchase price of the property is \$1,627,300 (with \$100,000 of the purchase price to be deposited by the Seller into a Demolition Escrow at closing). The City portion of pro-rated real estate taxes is estimated at \$6,500 (assuming an August 1, 2011 closing date), and miscellaneous closing costs of \$2,000 are anticipated. Stabilization costs include \$30,000 for the demolition costs of the buildings and related improvements on the Property in the event that costs exceed the funds in the Demolition Escrow and \$30,000 for environmental assessments and any required remediation of the Property.

Funding for this purchase and related costs is available within the 2011 Parks Division Adopted Capital Budget, under Project #31 "Central Park - Brearly Square". This project contains total funding of \$1,916,040, consisting of \$1,466,040 in General Obligation Debt and \$450,000 of impact fees from the Citywide Parkland Acquisition Fund SI32. Of the General Obligation Debt, \$630,000 is reauthorized from 2010, and the remaining \$836,040 is TIF reimbursable from TID #36 "Capitol Gateway Corridor".

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Research Products Corporation, for property located at 204 South Ingersoll Street for the proposed Central Park and the funding of costs associated with the stabilization of the property.

Body

The City of Madison is developing Central Park (the "Park"), an urban park in the East Isthmus Corridor on the near east side. The Park is expected to provide park and recreation facilities to meet the needs of the neighborhood and community, enhance the city's economic development potential, and stimulate renewed focus of the greater Isthmus as an employment center. The Park will interconnect jobs, housing, and recreation and create a signature feature and destination for the city.

The City has received donations of land for the Park but needs to acquire other parcels to facilitate the completion of the Park. One of the parcels identified for acquisition is located at 204 South Ingersoll Street (the "Property") and is owned by Research Products Corporation ("RPC"). RPC has offered to sell the Property to the City for the expansion of the Brearly Square portion of the Park (see attached exhibit). Terms and conditions for the acquisition of the Property have been negotiated between the City and RPC. The purchase price is supported by an appraisal obtained by the Office of Real Estate Services.

NOW, THEREFORE, BE IT RESOLVED that the Common Council hereby authorizes the execution of a Purchase and Sale Agreement (the "Agreement") between the City of Madison (the "Buyer") and Research Products Corporation (the "Seller") for the Seller's property located at 204 South Ingersoll Street (the "Property"), as legally described below and shown on the attached exhibit, for the proposed Central Park, on the following terms and conditions:

- 1. The Property.** The Buyer shall purchase and the Seller shall sell and convey by Warranty Deed (the "Deed") fee simple title to the Property, including all buildings and related improvements located thereon and all appurtenances thereto.
- 2. Purchase Price.** The total purchase price of the Seller's interest in the Property (the "Purchase Price") shall be One Million Six Hundred Twenty-Seven Thousand Three Hundred and 00/100 Dollars (\$1,627,300.00). The Purchase Price shall be payable in cash at closing, subject to the adjustments

and prorations herein provided. As a condition of the sale, at closing the Seller shall place One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "Seller's Contribution") into a "Demolition Escrow", as described in Paragraph 8 below, to be used by the Buyer for the demolition of the buildings and related improvements (including the conveyor system) on the Property. The Purchase Price does not include any trade fixtures or personal property of the Seller located on the Property.

3. Delivery of Documents. Within ten (10) days of the effective date of the Agreement, the Seller shall make available to the Buyer for review all environmental studies, reports, permits, applications and remediation plans or assessments of the Property and all studies, reports, plans or assessments related to the condition of the improvements on 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 on the Property in the Seller's possession or control.
4. Inspection Contingency. The Buyer, at its sole expense, may obtain an inspection of all buildings and related improvements located on the Property and/or a Phase I environmental assessment of the Property. The Buyer shall have ninety (90) days from the effective date of the Agreement (the "Inspection Contingency Period") to terminate the Agreement by written notice to the Seller based on the Buyer's objection to any matter shown in an inspection report or Phase I environmental assessment or other due diligence conducted by the Buyer which materially affects the Property or the Buyer's use of the Property. If the Buyer does not terminate the Agreement hereunder, then the Buyer is deemed to have waived this Inspection Contingency and any right to object to the condition of the Property or any improvements located thereon, and the sale will be an "as is" sale. 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 buildings or related improvements located thereon.
5. South Brearly Street Access Contingency. Prior to closing, the parties shall agree on a plan to preserve Seller's access from South Brearly Street to the loading docks for its facilities located at 1011 East Main Street. Such plan may include parking restrictions on and driveway renovations to South Brearly Street.
6. Access to the Property. The Buyer and the Buyer's authorized agents and contractors shall be permitted access to the Property for the purpose of conducting a Phase 1 and Phase 2 environmental assessment of the Property, conducting engineering and design work for the City's proposed Central Park (which would include field surveys, architectural and historic surveys, field reviews, and photography which activities may require the use of a drill rig), a physical inspection of any building and related improvements located on the Property at reasonable times with at least twenty-four (24)-hours notice to the Seller. All notices shall be given to Mr. Peter Hanson unless another person is identified to receive notice by the Seller. The Buyer will, at the Buyer's cost, repair all damages caused by its inspections so that the condition of the Property, including any buildings and related improvements, is returned to as good or better condition as existed prior to the inspection.
7. Insurance/Indemnification. Upon execution of the Agreement, the Buyer shall provide the Seller with a Certificate of Insurance for the policy period January 1, 2011 to December 31, 2011 with the Buyer's General Liability coverage limits of \$10,000,000.00 per occurrence with an aggregate of \$30,000,000.00 and a self-insured retention of \$300,000.00 per occurrence with an annual aggregate deductible of \$1,550,000.00.

The Buyer also agrees to require that contracts with all authorized agents and contractors permitted access to the Property pursuant to Paragraph 6 above shall include the following language:

Indemnification

The Contractor shall be liable to and hereby agrees to indemnify, defend and hold

harmless the City of Madison, Research Products Corporation, and their officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City of Madison, Research Products Corporation, or their officers, officials, 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 property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Contractor's and/or Subcontractor's acts or omissions in the performance of this agreement, whether caused by or contributed to by the negligence of the City of Madison, Research Products Corporation, their officers, officials, agents, or its employees.

Commercial General Liability Insurance

The Contractor shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000.00 per occurrence. This policy shall also provide contractual liability in the same amount. Contractor's coverage shall be primary and list the City of Madison, Research Products Corporation, their officers, officials, agents and employees as additional insureds. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, Research Products Corporation, their officers, officials, agents and employees as additional insureds.

8. Demolition Escrow. At closing, the Seller agrees to deposit the Seller's Contribution into an escrow account (the "Demolition Escrow") with the "Title Company" issuing the title commitment in accordance with Paragraph 10, which Demolition Escrow shall be used by the Buyer to pay for the cost of demolition of the buildings and related improvements on the Property (including the conveyor system). The Seller, the Buyer and the Title Company will be parties to the Demolition Escrow and the terms and conditions of the Demolition Escrow will be agreed to by the parties. The Buyer shall obtain bids for the demolition of the buildings and related improvements on the Property and shall enter into contracts to have the demolition work performed by the lowest qualified bidder and shall be entitled to draw on the Demolition Escrow to pay for the cost of demolition upon delivery to the Seller of invoices confirming that the work has been performed. Demolition costs in excess of the Seller's Contribution shall be the sole responsibility of the Buyer. Any monies remaining in the Demolition Escrow upon completion of demolition activities shall be released to the Seller. The demolition work shall be completed within ninety (90) days after vacation of the Property by the Seller, or as separately agreed to in writing by the parties. The Seller shall be responsible for all costs related to the repair of the Seller's building located at 1011 East Main Street resulting from the demolition and removal of the conveyor system.
9. Seller's Vacation of the Property. The Seller shall have ninety (90) days from the date of closing to vacate the Property (the "Vacation Period") or until September 15, 2011, whichever is later, unless another date is agreed to by the parties. Vacating the Property means that the Seller will remove all trade fixtures and personal property from the Property. During the Vacation Period the Seller shall be responsible for all utilities, maintenance, and repairs for all buildings and related improvements on the Property and shall maintain insurance in an amount approved by the Buyer's Risk Manager and naming the Buyer as an additional insured.
10. Title Insurance. The Seller shall provide to the Buyer at the Seller's expense at least ten (10) business days prior to closing a commitment from a title insurance company (the "Title Company") licensed in

Wisconsin to issue title insurance 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 standard title insurance exceptions acceptable to the Buyer. The Buyer shall notify the Seller of any valid objection to title, in writing, prior to closing. 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 Seller is unwilling to waive, the Agreement shall be void.

11. Closing.

- a. Closing shall occur within thirty (30) days after the waiver of the Inspection Contingency, at the office of the Title Company, unless the parties agree in writing to another date or place.
- b. 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 agreements entered under them; recorded easements for the distribution of utility, municipal and association services; easements for the performance of association duties; recorded building and use restrictions and covenants.
- 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.
- d. All real estate taxes with respect to the Property shall be prorated between the Buyer and the Seller as of the date of closing based upon the latest known assessment and latest known mil rate.
- e. 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.

BE IT FURTHER RESOLVED that funds are hereby authorized for the acquisition and stabilization of the Property as authorized in the City's Capital Budget (Central Park-Brearily Square) as follows: Purchase price \$1,627,300 (with \$100,000 of the purchase price deposited by Seller into a Demolition Escrow at closing), City portion of pro-rated real estate taxes \$6,500 (assumes August 1, 2011 closing date) and miscellaneous closing costs \$2,000. The stabilization costs include \$30,000 for the demolition costs of the buildings and related improvements on the Property in the event that said costs exceed the funds in the Demolition Escrow and \$30,000 for environmental assessments and any required remediation of the Property.

BE IT STILL FURTHER RESOLVED that the Mayor and City Clerk are authorized to sign any and all documents that are necessary to complete the transaction contemplated in this resolution.

LEGAL DESCRIPTION

The Northeast 355.54 feet of the Northwest 195.85 feet of Block 173, Original Plat aka Farwells Replat, and also the adjacent 33 feet of vacated Railroad Street, City of Madison, Dane County, Wisconsin.