



## Legislation Text

File #: 23496, Version: 1

### Fiscal Note

Sufficient funds for the proposed acquisition cost, prorated real estate taxes and related closing costs of approximately \$437,000 are available in the Water Utility capital budget, project #6, Zone 4 Fire Flow Supply Augmentation (810517).

### Title

Authorizing the execution of an Offer to Sell Real Estate with Genesis Commons LLC for the purchase of Lot 9 in the Final Genesis Plat for the development of a high capacity well in the southeast side of Madison.

### Body

WHEREAS, The Madison Water Utility Water Master Plan of December, 2008 identified the southeast part of the City of Madison as an area in need of improved fire protection and system redundancy and,

WHEREAS, The Madison Water Utility Board authorized on December 15, 2009 drilling a new well as the best solution to address the needs of fire protection and redundancy.

NOW, THEREFORE BE IT RESOLVED that the Common Council of the City of Madison authorizes an Offer to Sell and Purchase ("Offer") to Genesis Commons LLC or assigns (the "Seller") for approximately 3.04 acres of land located at 4901 Tradewinds Parkway ( the "Property"), as shown and identified on attached Exhibit A, subject to the following terms and conditions:

- 1. Description.** The Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the Property. The Property is shown on Exhibit A and is legally described as Lot 9 of the Genesis Plat recorded on June 10, 2011 in Volume 59-091A of Plats on Pages 419-421 as Document No. 4770373, Dane County Register of Deeds, Madison, Wisconsin.
- 2. Purchase Price.** The total purchase price to be paid by Buyer to Seller for Seller's conveyance of fee simple ownership of the Real Estate (the "Purchase Price") shall be Four Hundred Thirty Three Thousand Three Hundred and Sixty One Dollars (\$433,361). The Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided.
- 3. Earnest Money.** Following Common Council approval and upon execution of this Offer by the parties, the Buyer shall pay the Seller \$2,500 Earnest Money. This Earnest Money shall be non-refundable and shall be applied towards the Purchase Price at closing.
- 4. 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 licensed in Wisconsin to issue an owner's title insurance policy in the amount of the total Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Real Estate, as of a date no more than fifteen (15) days before such title commitment is provided to the Buyer, subject only to liens which will be paid out of the proceeds of the closing, the standard exceptions listed in Section 8 (b) below and to any title insurance exceptions acceptable to the Buyer. The Buyer shall notify the Seller of any valid objection to title, in writing, within fifteen (15) days of receiving the title commitment. The Seller shall have a reasonable time, but not exceeding fifteen (15) days from Buyer's objection notice, to remove the objections, and closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to carry out this Offer by reason of a valid legal defect in title which the Buyer is unwilling to waive, this Offer shall be void. In the event the Buyer makes no written objections to title on

or before fifteen (15) days following receipt of the title commitment, Buyer shall be deemed to have accepted the condition of title and this contingency shall be deemed waived.

5. No Personal Property. The transaction contemplated by this Offer does not include any personal property.

6. Condition of Real Estate. Except as disclosed at the end of this section and any matters which Buyer has actual knowledge of, the Seller represents and warrants to Buyer that, as of the date of this Offer, Seller has no notice or knowledge of:

- a) Conditions constituting a significant health or safety hazard for occupants of the Real Estate;
- b) Underground storage tanks, water wells, septic tanks, chemical spills, or the presence of any dangerous or toxic materials or conditions in or affecting the Real Estate;
- c) Completed or pending reassessment of the Real Estate for property tax purposes;
- d) Material violations of environmental rules or other rules or agreements regulating the use of the Real Estate;
- e) High voltage electric (100KV or greater) or steel natural gas transmission lines located on, but not directly serving the Real Estate; or
- f) Other material, adverse conditions or occurrences which would significantly reduce the value of the Real Estate to a reasonable person with knowledge of the nature and scope of the condition or occurrence.

7. Contingencies:

a) Environmental Conditions. The Buyer and its agents shall have the right to conduct investigations, inspections and testing relating to environmental conditions of the Real Estate including, but not limited to, soil samples, site assessments and surveys as the Buyer deems reasonably necessary. If the results of such testing are not satisfactory to the Buyer, the Buyer shall so notify the Seller in writing on or before ninety (90) days after the date of full execution of this Offer. Upon receipt of such notice, the Seller shall have the option to either (a) remediate or otherwise correct the environmental conditions(s) affecting the Real Estate and the closing shall be extended as necessary for this purpose; or (b) terminate this Offer by giving written notice to the Buyer at any time prior to the date of closing. In the event the Buyer makes no written objections regarding environmental conditions on or before ninety (90) days following acceptance of this Offer, this contingency shall be deemed waived.

b) Right of Entry. Upon execution of this Offer, the Seller shall provide the Buyer with a Right of Entry that will allow the Buyer, and its agents and contractors, access to the Real Estate to conduct any and all testing activities required for siting a high capacity municipal well on the Real Estate. The Right of Entry shall be effective until June 1, 2012 or the date of closing, whichever occurs first. Should, at its sole discretion, the Buyer determine that the results of the test well are unsatisfactory, the Buyer may terminate this Offer by providing the Seller with written notice at any time prior to the closing. Upon termination of this Offer, the Buyer shall, at its sole expense, restore the Real Estate to a condition that is as good or better than what existed prior to the Buyer's testing activities.

c) The purchase and sale of the Real Estate shall be closed no later than June 30, 2012, and shall

occur at the office of the title insurance company issuing the commitment for title insurance, unless the parties agree in writing to another date or place.

- d) The Seller agrees to execute and deliver to the Buyer at closing a Warranty Deed conveying the Real Estate to the Buyer free and clear from all liens and encumbrances, excepting any exceptions to title not objected to (or waived) by Buyer pursuant to Condition 4 and the following: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, and general taxes levied in the year of closing.
  - e) 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 Real Estate to be in the condition called for by this Offer.
  - f) The Seller shall pay all real estate transfer taxes payable pursuant to Section 77.25, Wisconsin Statutes, if any.
8. Real Estate Taxes. Net general taxes shall be prorated at the time of closing based on the net general taxes for the current year, if known, or latest assessment times the latest known mill rate.
9. Special Assessments. The Seller shall be responsible for 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 Real Estate as of the date of closing. Special assessments for the Real Estate are estimated to be \$267,697.00.

BE IT FURTHER RESOLVED, that this resolution authorizes the Mayor and City Clerk to execute any and all documents necessary to complete this transaction in a form acceptable to the City Attorney.