



## Legislation Text

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**File #:** 30382, **Version:** 1

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### **Fiscal Note**

(Please see also the spreadsheet attachment that summarizes the proposed/projected costs and sales revenues.)

The termination agreement will not increase the City's loss exposure relative to its past and projected investments in the industrial site development project. The agreement will allow the City to recover its previous investments in the project and provide additional revenues that may be allocated to site improvements that will increase the marketability of the development.

The City's initial cost for the acquisition of the 162 acre site was \$1,330,000. As part of the termination agreement, the City will assume responsibility for the costs of infrastructure improvements (water and sewer mains and street and storm water improvements) already incurred, amounting to \$1,114,802 on the acreage that CIC has already sold or taken down, plus \$1,180,739 on the remaining acreage, for a total of \$2,295,541. These special assessment costs will be paid (and recovered) as part of the future sales proceeds as lots are sold.

The City will incur additional expenses for future site improvements (streets and utilities) in order to enhance the marketability of the lots. A City-commissioned financial analysis estimated the cost of these improvements at \$5,044,925, which represents the costs the City may incur over the next several years. Funding to support these costs will need to be included in future capital budgets, subject to Common Council approval.

In sum, the City's total anticipated investment (incurred and projected) in the site is \$8,670,466 (\$1,330,000 initial purchase plus \$2,295,541 special assessment expense plus \$5,044,925 for future improvements and other expenses such as holding costs).

However, the realized and projected revenues the City may anticipate exceed the anticipated costs. CIC has paid the City \$3,548,100 for the acreage it has sold or taken down. Additionally, City Real Estate estimates a market value of \$3,163,762 for the 24.21 acres that CIC will convey back to the City. Lastly, the estimated market value of the City Retained Acreage (72 acres) is \$9,054,382. These revenue estimates total \$15,766,244.

Therefore, the projected total City investment in the site is \$8,670,466 as compared to the City's projected revenues derived from sales of \$15,766,244, resulting in anticipated net City revenues of an estimated \$7,095,778.

Given the positive revenue projection and the likelihood that the City would not be able to recover assets of any significance in the event of a default, the termination agreement is both a "good-faith" resolution to the disposition of a development project that could not be brought to fruition primarily due to the downturn in the economy, and one that protects the City's interests while still allowing for the potential future development of the site.

### **Title**

Authorizing the execution of an Agreement to Terminate the "Agreement to Purchase and Undertake Development of the Northeast Industrial Property" executed between the City of Madison and The Center for Industry & Commerce, LLC.

### **Body**

In January 1994 the City of Madison (the "City") conducted an Industrial Land Study that identified a shortage of developable land for industrial uses. As a result of this finding the City approved the purchase of several large tracts of land and issued RFP's for the sale of the tracts for industrial development. In November 2002 the City executed an Agreement to Purchase and Undertake Development ("the "Agreement") with The Center for Industry & Commerce LLC ("CIC), a T. Wall Properties subsidiary, to acquire and develop approximately 162 gross acres (includes roads) (147 net) as a mixed-use industrial park. The major terms of the Agreement are:

1. The City would hold the land and CIC would take the land down in not more than 7 phases over 10 years. Initially each phase was required to be a minimum of 23.5 gross acres. The Agreement was subsequently amended to allow take downs in lesser acreage amounts under certain conditions.
2. The initial base price was \$35,578/acre with a 10% annual escalator applied on June 25th of each year of the Agreement. The current base price is \$83,891/acre.
3. The City is responsible for the construction of public roads and utilities within the industrial park with the special assessments being deferred for a period not to exceed 10 years (per MGO's) or until such time as a lot is sold or a building permit is issued for a lot. A portion of the platted public roads and utilities have been constructed and the costs of these improvements have been assessed to the lots within the industrial park.
4. CIC is required to purchase all of the property by the end of year 10 of the Agreement (June 24, 2013). To date CIC has sold 54 net acres, taken down an additional 28 net acres that are available for sale and has 72 gross acres (64 net acres after the acreage for roads is taken out) yet to be taken down. CIC has paid the City \$3,548,100 for the acreage purchased. The City's basis in the property is \$1,330,000.

CIC states that despite aggressive marketing and attempts to create activity by providing incentives and constructing spec buildings, absorption of the land in the industrial park was less than anticipated. CIC has stated that the terms of the Agreement do not allow it to be competitive in the current depressed industrial market. CIC argues that collectively the current base price of \$83,891/acre and the deferred special assessments do not allow the lots to be competitively marketed. Given the current market this is an accurate analysis. Additionally CIC states that, given current market conditions, the term of the Agreement did not provide sufficient time to absorb the remaining acreage given the current industrial market. This is also an accurate statement supported by the fact that 72 acres remain to be taken down by CIC and the Agreement expires on June 24, 2013.

Under the terms of the Agreement, CIC is contractually obligated to pay the City an additional \$6,040,152 for the balance of the property held by the City. If CIC does not acquire the remaining acres by the expiration of the Agreement it will be in default of the Agreement and the City will have the right to legally pursue specific performance under the terms of the Agreement. However, it is doubtful that CIC has any assets that the City can make a claim against and is precluded by the creation of the LLC to be able to file a claim against T. Wall Properties, the parent company. The City Attorney's Office supports the scenario that the City's only recourse would be against an entity (CIC) with no assets and would likely result in no additional proceeds or compensation to the City.

In an effort to avoid a default scenario, CIC has agreed to deed back to the City, at no cost, 14 lots containing approximately 24.21 acres of land (see attached) (collectively, the "CIC Lots"), in exchange for a mutual termination of the Agreement and being relieved of any remaining obligations. The acreage for the CIC Lots was acquired in 2003 and 2004 by CIC from the City for \$860,988. Additionally CIC has incurred costs of over \$700,000 to date for zoning, land division and storm water pond construction in the industrial park. The City would be responsible for the payment of the \$1,114,802 of current special assessments (cost of water main, sewer main, street improvement and storm water prorated for each lot) against the CIC Lots upon conveyance of the CIC Lots to the City. These special assessments will be paid upon the sale of the CIC Lots out of the proceeds of sale. The estimated market value of the CIC Lots is \$3,163,762 (24.21 acres x 43,560 sq ft/acre x

\$3.00/sq ft).

In addition to the special assessments on the CIC Lots, the City would be responsible for the special assessments of \$1,180,739 on the 72 gross acres (64 net acres) (the "City Retained Acreage") it will retain upon the termination of the Agreement. The City commissioned an appraisal which provided a financial analysis of the City Retained Acreage. To make the all of City Retained Acreage marketable (some of the City Retained Acreage is already serviced by streets and utilities) the City will need to construct additional public improvements including streets and utilities. These costs and other holding costs (sales commissions, marketing costs, administrative costs) are estimated to be \$6,225,664 million over a ten (10) year absorption period. The estimated total revenues received by the City for the sale of the City Retained Acreage within this ten (10) year period was projected to be \$9,054,382 which would result in net revenues of \$2,828,718.

The CIC industrial park is well positioned in location and amenities to be competitive in the current industrial park market. It is strategically located to interstate and State highway access, the Dane County Regional Airport and is adjacent to other lands that are zoned and being developed as industrial parks. The City will have a considerably lower cost basis in the property than CIC that will allow the City to price the land competitively in the current market for industrial land.

NOW THEREFORE BE IT RESOLVED that the Common Council authorizes the execution of an Agreement to Terminate the "Agreement to Purchase and Undertake Development of the Northeast Industrial Property" (the "Agreement") between the City of Madison (the "City") and The Center for Industry & Commerce, LLC dated November 15, 2002 and amended by a First Amendment dated June 29, 2006 (the "Development Agreement") pursuant to the following terms and conditions:

- 1) Conveyance. In consideration of the sum of One Dollar (\$1.00), the Developer shall execute and deliver to the City a warranty deed (the "Deed"), conveying the following Lots: Lots 1, 2, 74 through 84, and 92, The Center for Industry & Commerce (collectively, the "CIC Lots"), as shown on the attached exhibit. Such conveyance shall be subject to the following conditions:
  - a) Title Insurance. The Developer shall provide to the City, at the Developer's expense, within thirty (30) days after the execution of this Agreement a commitment from First American Title Insurance Company (the "Title Company") to issue an ALTA Owner's Title Insurance Policy in the amount of \$3,163,762.00 upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Lots, as of a date no more than fifteen (15) days before such title proof is provided to the City, to be in the condition called for in this Agreement, and further subject only to liens and to any exceptions acceptable to the City ("Permitted Exceptions"). The City shall notify the Developer of any valid objection to title, in writing, within fifteen (15) days of receipt of the commitment. The Developer shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and the date of closing of the transaction (the "Closing Date") shall be extended as necessary for this purpose. Should the Developer be unable or unwilling to carry out this condition by reason of a valid legal defect in title which the City is unwilling to waive, this Agreement shall be void.
  - b) The Developer agrees to execute and deliver to the City at closing the Deed conveying the CIC Lots to the City free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and the Permitted Exceptions.
  - c) At closing, the Developer at its expense shall cause the Title Company to issue a current ALTA owner's title insurance policy in the amount of \$3,163,732.00, insuring the City as the fee simple owner of the CIC Lots as of the date of recording of the Deed, including gap coverage, subject only to the Permitted Exceptions.

- d) The City shall pay all recording/filing fees except that the Developer shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the CIC Lots to be in the condition called for by this Agreement.
  - e) The Developer and the City shall each pay its prorated share of the 2013 real estate taxes with respect to the CIC Lots based upon the latest known assessment and latest known mil rate.
  - f) The City 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 CIC Lots as of the Closing Date.
  - g) The Developer shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the CIC Lots.
- 2) Leasing: The Developer hereby represents that the CIC Lots are not leased or occupied, and the Developer hereby agrees that it shall not enter into any lease or rental agreement for the CIC Lots, or any portion thereof, or allow the occupation of the CIC Lots from the effective date of this Agreement and through the Closing Date, without the prior written consent of the City.
- 3) Termination and Mutual Release. The City and the Developer hereby agree that the Development Agreement and all of their respective rights and obligations thereunder, shall be and hereby are terminated in all respects effective as of the Closing Date, and that from and after the Closing Date the Development Agreement shall be null, void and of no further force or effect whatsoever. The City and the Developer hereby release each other from any and all actions, causes of action, suits, debts, sums of money, claims, demands, obligations, and liability whatsoever in law or in equity, which either has against the other arising out of the Development Agreement. Nothing set forth herein shall release either party hereto from any obligation that it may have as the owner of one or more of the Lots, and which obligations arise out of any recorded easements or covenants affecting title to such Lot or Lots.

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