



## Legislation Text

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**File #: 33061, Version: 1**

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The Resolution authorizes amendments to modify the dates and timelines by which various conditions and contingencies must be addressed. The basic project scope or financing is unaffected, and no additional appropriation is required.

Authorizing the execution of a First Amendment to the Purchase and Sale Agreement executed between the City and Gebhardt Development, LLC.

The City of Madison (the "Seller") executed a Purchase and Sale (the "PSA") with Gebhardt Development LLC (the "Buyer"), dated July 18, 2013 (the "Effective Date"), that provided that the Buyer will acquire from the Seller properties located at 802 and 854 East Washington Avenue (the former Don Miller property) for the development of a mixed-use project (the "Project").

Subsequent to the execution of the PSA, certain conditions and dates have changed that necessitate an amendment to the PSA (the "First Amendment"). Section 11 of the PSA currently provides that the Buyer shall have one hundred eighty (180) days from the Effective Date to satisfy or waive certain contingencies (the "Buyer's Contingency Period") including Land Use Approvals and Project Financing, including but not limited to Tax Incremental Financial Assistance ("TIF"). Section 11 also provides that the Buyer's Contingency Period can be extended for an additional sixty (60) days by written notice to the Seller prior to the expiration of the Buyer's Contingency Period. The Buyer provided the required written notice prior to the expiration of the Buyer's Contingency Period and the Buyer's Contingency Period has been extended to March 15, 2014. Section 12 of the PSA provides that the Seller shall have one hundred eighty (180) days from the Effective Date to satisfy or waive a contingency (the "Seller's Contingency Period") that provided the Seller obtain budget authorization from the Common Council for any TIF assistance for the Project. Section 12 also provides that the Seller may extend the Seller's Contingency Period for an additional sixty (60) days by written notice to the Buyer prior to the expiration of the Seller's Contingency Period. Upon receipt of the Buyer's written notice to extend the Buyer's Contingency Period, the Seller provided the Buyer with written notice extending the Buyer's Contingency Period to March 15, 2014.

Due to extended negotiations for an anchor tenant for the Project, the securing of Land Use Approvals and Project Financing will extend beyond the current Buyer's Contingency Period and Seller's Contingency Period expiration date of March 15, 2014. The First Amendment provides that, due to the greater amount of time required to satisfy the Buyer's Contingencies and the Seller's Contingencies that both the Buyer's Contingency Period and the Seller's Contingency Period be extended to May 31, 2014 to accommodate the revisions in the Project timeline.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a First Amendment to the Purchase and Sale Agreement (the "PSA") between the City of Madison (the "Seller") and Gebhardt Development LLC (the "Buyer"), dated July 18, 2013, that will amend the PSA as follows:

1. The following language from the introductory paragraph in Section 11 of the PSA is deleted:

"The Buyer shall have one hundred eighty (180) days from the Effective Date (the "Buyer's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate this Agreement if any of the Buyer's contingencies cannot be completed despite the Buyer's best efforts:"

and is replaced with the following:

“The Buyer shall have until May 31, 2014 (the “Buyer’s Contingency Period”) to satisfy or waive the following contingencies or to otherwise terminate this Agreement if any of the Buyer’s contingencies cannot be completed despite the Buyer’s best efforts:”

The last paragraph in Section 11 of the PSA is deleted:

“The Buyer’s Contingency Period may be extended for an additional sixty (60) days by written notice from the Buyer to the Seller prior to the expiration of the Buyer’s Contingency Period”

2. The following language from the introductory paragraph in Section 12 of the PSA is deleted:

“The Seller shall have one hundred eighty (180) days from the Effective Date (the “Seller’s Contingency Period”) to satisfy or waive the following contingencies or to otherwise terminate this Agreement if any of the Seller’s contingencies cannot be completed despite the Seller’s best efforts.”

and is replaced with the following:

“The Seller shall have until May 31, 2014 (the “Seller’s Contingency Period”) to satisfy or waive the following contingencies or to otherwise terminate this Agreement if any of the Seller’s contingencies cannot be completed despite the Seller’s best efforts.”

The last paragraph in Section 12 of the PSA is deleted:

“The Seller’s Contingency Period may be extended for an additional sixty (60) days by written notice from the Seller to the Buyer prior to the expiration of the Seller’s Contingency Period”

3. The undersigned parties agree that the PSA remains in full force and effect as of the date hereof and the parties agree they shall continue the PSA on the terms contained therein but subject to the modifications and amendments described in this First Amendment.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution.