Legislation Text

File #: 35737, **Version:** 1

Fiscal Note

This amendment changes some aspects of the original Purchase and Sale agreement that primarily affect project phasing, but the basic financial terms of the agreement are unchanged. The City's total costs for acquiring the Property are an estimated $3,496,925 (including purchase price of $3,300,000 ($6.64 per sq ft) and $196,925 for prorated taxes and miscellaneous acquisition (appraisal, environmental assessment) and closing costs. The City holding costs on the Property are approximately $131,443. The City is selling the Property for $6,000,000 ($12.07 per sq ft). The Property is within Tax Incremental Financing District No. 37 Union Corners and the costs to acquire the Property were charged to the TID. Sales proceeds will be credited to the TID.

Title

Authorizing the execution of a First Amendment to the Purchase and Sale Agreement executed between the City of Madison and Gorman & Company.

Body

On October 30, 2013 the City of Madison (the "Seller") executed a Purchase and Sale Agreement (the "PSA") with Gorman & Company, Inc. (the "Buyer") for the conveyance and redevelopment of properties owned by the City located at 2504, 2507 and 2340 Winnebago Street, Madison, WI (collectively, the "Property") for a mixed-use redevelopment project. Under the terms of the PSA the Buyer was required to develop the Property in four phases. Phase 1 was to consist of 60,000 square feet of medical clinic space and the other three phases were to consist of a mix of residential, retail and commercial space. Phase 1 had to be developed first with development of the remaining three phases being developed in any order. The PSA contained Buyer Contingencies that had to be satisfied or waived within one hundred eighty (180) days of October 30, 2013. The Buyer Contingencies included land use approvals, project financing, Property inspections, survey and title, environmental review and TIF loan documents. The PSA provided that the Buyer could extend the Buyer Contingency Period for an additional ninety (90) days if, despite diligent efforts, the Buyer could not satisfy the Buyer Contingencies. The Buyer exercised its right to extend the Buyer Contingency Period.

The extended Buyer Contingency Period expired on July 29, 2014. The Buyer was not, despite diligent efforts, able to satisfy all of the Buyer Contingencies by this date. The PSA required that the closing occur within thirty (30) days of the Buyer's satisfaction or waiver of the Buyer Contingencies. The Buyer could not close due to the fact that not all of the Buyer Contingencies were satisfied. The PSA expired at the end of this thirty (30) day period on August 28, 2014. The Buyer has requested that the PSA be amended to extend the Buyer Contingency Period and increase the number and change the order of the development of the phases. The proposed terms of the First Amendment to the PSA would provide that the Buyer Contingency Period be extended until April 30, 2015 with the Buyer having the option to extend it an additional thirty (30) days for a non-refundable fee of ten thousand dollars ($10,000). Closing would still be required to occur within thirty (30) days of the satisfaction or waiver of the Buyer Contingencies. The First Amendment would also provide that the number of phases be increased from four to six and that either Phase 1 (medical clinic space) or Phase 2 (residential and retail) can be developed first and that the remaining phases can be developed in any order. The proposed First Amendment also contains changes that reflect the increase in the number of phases and eliminates the City's obligation to construct a street from East Washington Avenue to Winnebago Street.

BE IT RESOLVED that the Common Council authorizes the execution of a First Amendment to the Purchase and Sale Agreement (the "Agreement") executed between the City of Madison (the "Seller") and Gorman & Company, Inc. (the "Buyer"), on October 30, 2013, for the conveyance and redevelopment of properties owned by the Seller located at 2504, 2507 and 2340 Winnebago Street, Madison, Wisconsin (collectively the

"Property"), for a mixed-use redevelopment project, subject to the following terms and conditions:

A. Capitalized terms used, but not defined, herein shall have the meanings ascribed to them in the Agreement (as hereinafter defined).

B. Section 1 of the Agreement is hereby modified to read, in its entirety:

1. Property. The Seller shall sell and convey to the Buyer by Warranty Deed (the "Deed"), fee simple ownership of properties owned by the Seller located at 2504, 2507 and 2340 Winnebago Street, Madison, WI (collectively, the "Property"), as legally described on the attached Exhibit A, including all improvements located thereon and all appurtenances thereto. The Property will be developed in the phases shown on the attached Exhibit C as Phase 1, Phase 2, Phase 3, Phase 4, Phase 5, and Phase 6 (individually a "Phase" and collectively, the "Phases"). The Property shall include portions of vacated roads located within the Property, including without limitation vacated portions of Winnebago Street, Florence Street, Sullivan Street, and Milwaukee Street.

C. Section 3 of the Agreement is hereby amended to read, in its entirety:

3. Project. The Buyer or other entities owned or controlled by the Buyer (the "Buyers") shall collectively develop a mixed-use project (the "Project") on the Property. The Project shall consist of approximately 60,000 square feet of medical facility space with parking on Phase 1 as required by the City of Madison pursuant to its design review and zoning review process (the "Phase 1 Project") and is currently contemplated to consist of the following, subject to design and zoning review: a mixed-use building on Phase 2 (the "Phase 2 Project"), a mixed-use building on Phase 3 (the "Phase 3 Project"), mixed-use retail/residential space with parking stalls on Phase 4 (the "Phase 4 Project"), multifamily residential buildings on Phase 5 (the "Phase 5 Project"), and office or retail uses on Phase 6 (the "Phase 6 Project). The Buyer shall develop either the Phase 1 Project or the Phase 2 Project first. The remainder of the Phases may be developed in any chronological order upon the commencement of construction of either the Phase 1 or 2 Projects. The precise uses of the Phases are subject to adjustment based on market conditions and applicable zoning including the approved General Development Plan.

D. Section 4.a of the Agreement is amended by modifying the first sentence to read as follows:

a. The Buyer shall complete and submit to the Seller, within thirty (30) days of the execution of the First Amendment to the Purchase and Sale Agreement, a Tax Increment Finance ("TIF") Application for the entire Project. The application shall demonstrate that the entire Project cannot be developed but for the provision of Six Million Dollars ($6,000,000) of TIF assistance from the Seller. It is anticipated that neither Phase 1 nor Phase 2 of the project will demonstrate a financing gap of Six Million Dollars ($6,000,000).

E. Section 9.c. of the Agreement is hereby amended to read, in its entirety:

c. Voluntary Party Liability Exemption. The Seller warrants that as of the Closing, a Voluntary Party Liability Exemption certificate of completion has been issued for Phases 1, 2, 3, 4, and 5 of the Property and a Final Case Closure Letter has been issued for Phase 6 of the Property.

F. Section 12 of the Agreement is hereby amended to read, in its entirety:

12. Public Improvements. The Buyer shall construct, at its cost, the improvements for the pedestrian walkway connecting East Washington Avenue to Winnebago Street between Phases 1 and 2, to the west, and 3 and 4, to the east, as shown on Exhibit C. The Buyer shall grant a public access

easement to allow public pedestrian access over the two walkways. Construction of the Project may require the closing of the two (2) existing curb cuts on East Washington, the closing of the two (2) existing curb cuts on Winnebago Street, the creation of three new curb cuts on Winnebago Street, the construction of angled parking on Winnebago Street, the installation of any public utilities (water, storm water, sewer) required for the development of the Property (collectively, the "Public Improvements"), all of which will be constructed by the Buyer, at its cost, in accordance with a General Development Plan and Specific Improvement Plans approved by the Seller's appropriate committees from time to time.

G. Section 13 of the Agreement is hereby amended by replacing the term, "Phase 4," with the term, "Phase 6."

H. Section 14 of the Agreement is amended by modifying the first sentence to read as follows:

14. Buyer Contingencies. The Buyer shall have until 5:00 p.m. on April 30, 2015 to satisfy or waive the contingencies set forth below relative to the Property, or to otherwise terminate the Agreement if any contingency is unacceptable, in the Buyer's sole discretion.

I. Section 14 of the Agreement is further amended by modifying Subsection 14.b. to read as follows;

b. The Buyer securing financing acceptable for development of either the Phase 1 Project or the Phase 2 Project.

J. Section 14 of the Agreement is still further amended by modifying the last paragraph to read as follows:

Provided that the Buyer has used diligent efforts to satisfy all contingencies set forth above during the Buyer Contingency Period, and, despite such efforts, has not yet satisfied or waived the contingencies, the Buyer, acting unilaterally, may extend the Buyer Contingency Period for an additional thirty (30) days by delivery of written notice to the Seller prior to the expiration of the Buyer Contingency Period. Said written notice shall be accompanied by a Ten Thousand Dollar ($10,000) "Extension Payment". The Extension Payment shall be non-refundable except in the event of a Seller default as provided in Paragraph 24, in which case the Extension Payment shall be refunded to the Buyer.

K. Section 16 of the Agreement is hereby amended to read, in its entirety:

16. Certified Survey Map. The Seller shall, at its cost, be required to secure approval of a certified survey map that would create four (4) lots on the Property that would generally conform with the boundaries of Phases 1, 2, 3, and 4 as shown on the attached Exhibit C which would be recorded prior to the Closing.

L. Section 23 of the Agreement is hereby amended to read that notices to BUYER will be sent with a copy to:

Nathan J. Wautier
Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 600
Madison, WI 53703

M. Exhibit C of the Agreement is hereby replaced in its entirety with Exhibit C attached hereto and made a part hereof.

N. Exhibit D of the Agreement is hereby replaced in its entirety with Exhibit D attached hereto and made a part hereof.

O. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Facsimile or e-mail signatures shall be treated in all respects as originals for purposes of creating a valid and binding contract.

BE IT FINALLY RESOLVED that 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.