



Legislation Text

File #: 37893, **Version:** 1

Fiscal Note

Funding in the amount of \$1,250,000 (\$1,200,000 purchase price and \$50,000 for costs associated with the purchase of the Property including a Phase 1 and/or Phase 2 Environmental Site Assessment(s), an appraisal, an ALTA survey, proration of real estate taxes and other miscellaneous closing costs) is authorized to be used from the General Land Acquisition Fund (Munis:10772). The current balance in the General Land Acquisition Fund is \$1,934,865.07. After the purchase of the former Griff's property (\$469,000) and Mt. Olive Residence (\$210,000) are reflected in the financial system, the balance will be \$1,255,865.07. The purchase approved through this resolution will reduce the balance to an estimated \$5,865.07.

Title

Authorizing the acceptance of an assignment of an Offer to Purchase from Treysta Group, LLC for the purchase of property located at 3618-3630 Milwaukee Street.

Body

WHEREAS, the property at 3618-3630 Milwaukee Street ("the Property") is located between two potential substantial development/redevelopment areas; and,

WHEREAS, the City's *Comprehensive Plan* currently calls for Low Density Residential development on the Property; and,

WHEREAS, access and planning considerations limit the ability of the Property to be developed as a stand-alone parcel; and,

WHEREAS, if assembled with one or both of the adjoining parcels at a later date, a developer could utilize the Property, increasing its long-term value and property tax generation for the City; and,

WHEREAS, under City ownership, the City could work with and sell the Property to a developer interested in one of the adjoining parcels; and,

WHEREAS, as vacant parcels, the Property generated \$19,121.69 of property taxes in 2014; and,

WHEREAS, if redeveloped in a more comprehensive manner as part of an assemblage with adjoining parcels, the long-term generation of additional property taxes would compensate for the Property being off of the tax rolls in the intervening years; and,

WHEREAS, the City of Madison already owns parkland and a stormwater facility adjacent to the Property; and,

WHEREAS, when coupled with adjoining parcels, the Property provides for one of very few large-scale development/redevelopment opportunities within an already built-out area of the City; and,

WHEREAS, Planning Division staff is considering future planning initiatives in the area around the Property; and,

WHEREAS, if developed appropriately, the Property and adjoining parcels can help to strengthen and support the existing adjoining neighborhoods; and,

WHEREAS, the land is currently encumbered by a Vacant Land Offer to Purchase between Leo Duren, Duren Income Trust (the "Seller") and Treysta Group, LLC (the "Assisgnor").

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the acceptance of an assignment (the "Assignment") by the City of Madison (the "Buyer") of a Vacant Land Offer to Purchase ("Offer") from the Assignor for the purchase of property from the Seller located at 3618-3630 Milwaukee Street, Madison, Wisconsin (the "Property"), as shown on the attached exhibit and as legally described below, subject to the following terms and conditions:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Warranty Deed (the "Deed"), fee simple ownership of the Property including all improvements and fixtures located thereon and all appurtenances thereto.
2. Effective Date. The "Effective Date" shall be the later date of execution of any Assignment of this Offer by the Seller or the Buyer, as indicated on the signature page.
3. Purchase Price. The total purchase price for the Seller's interest in the Property (the "Purchase Price") shall be One Million Two Hundred Thousand Dollars (\$1,200,000). The Purchase Price shall be payable in cash at Closing, subject to the adjustments and prorations herein provided.
4. Earnest Money. The Buyer shall pay to the Seller Four Thousand Dollars (\$4,000) as "Earnest Money" which shall be non-refundable except as otherwise provided in this Offer.
5. Delivery of Documents. Within ten (10) days of the Effective Date, the Seller will reproduce at the Seller's expense and send, either electronically or by hard copy, to the Buyer at the Buyer's office, copies of the following documents in the Seller's possession or control: all environmental studies, reports, permits, applications and remediation plans or assessments of the Property, and all building plans, studies, reports, 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.
6. Buyer's Contingencies. The Buyer shall have ninety (90) days from the Effective Date (the "Buyer's Contingency Period") to review, test and inspect the Property, including any building(s) or related improvements located on the Property, including but not limited to: (1) a Phase 1 and/or 2 Environmental Site Assessment and soil testing; (2) obtain an appraisal that supports the purchase price; and, (3) obtain budget authorization for the purchase of the Property. . If within the Buyer's Contingency Period the Buyer determines, in its sole discretion, that it does not desire to purchase the Property, the Buyer may provide written notice to the Seller of such desire and this Offer shall terminate immediately. If the Buyer timely terminates this Offer as provided in this paragraph, the Earnest Money, including any accrued interest, shall be immediately refunded to the Buyer.

If the Buyer does not provide written notice terminating this Offer on or prior to the ninetieth (90th) day of the Buyer's Contingency Period, this Offer shall remain in full force and effect, the Buyer shall accept the Property as-is, and the parties shall proceed to close the transaction as provided herein.

Should the Buyer desire to close prior to the end of the Buyer's Contingency Period, the Buyer may provide the Seller with written notice of its intent to do so. The provision of such notice by the Buyer shall not affect the terms contemplated in this Offer, except that the closing date shall occur on or before thirty (30) days from the date the Seller receives such notice, unless the parties agree in writing to another date.

The Buyer's Contingency Period may be extended for an additional thirty (30) days by written notice from the Buyer to the Seller delivered prior to the expiration of the Buyer's Contingency Period.

7. Seller's Contingency. This Offer is contingent upon the Seller entering into loan or mortgage payoffs within forty-five (45) days of the Effective Date with first and second lien holders not to exceed One Hundred Sixty Four Thousand Dollars (\$164,000) with first lien holder and Four Hundred Ten Thousand Dollars (\$410,000) with second lien holder. Failure to comply with this section shall result in the immediate refunding of the Earnest Money plus any accrued interest to the Buyer.

8. Access to Property. From and after the date of this Offer until the closing date or earlier termination of this Offer as provided herein, the Seller shall permit the Buyer and its authorized agents, engineers, consultants, appraisers and contractors for the purpose of conducting the inspections, environmental investigations, appraisals and testing anticipated by the Buyer's Contingencies. All inspection fees, appraisal fees, engineering fees and all other costs and expenses of any kind incurred by the Buyer relating to the inspection of the Property shall be solely the Buyer's expense.

The Buyer shall give the Seller reasonable prior notice before the Buyer enters upon the Property. The Buyer, any of its authorized agents, engineers, consultants, appraisers, and contractors performing work on the Property shall maintain commercial General Liability Insurance covering claims for bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000) per occurrence. If requested, certificates of insurance evidencing this coverage shall be provided to the Seller prior to the performance of any work by the Buyer, its agents or contractors.

Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies and representatives and shall be responsible for any losses, claims and liabilities which are attributable to such acts, errors, or omissions providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, board, committees, commissions, agencies and representatives. It is not the intent of the parties to waive any statutory protections or impose liability beyond that imposed by state statutes.

The Buyer agrees that if it terminates this Offer, as provided herein, or fails to close the transaction contemplated hereby for any reason, then, the Buyer shall deliver to the Seller, at no cost to the Seller, complete and accurate copies of all of the Buyer's due diligence materials other than any attorney work product or attorney-client privileged documents.

The Buyer shall keep the Property free of all liens in connection with its inspection of the Property and shall cause all such liens to be removed immediately upon being notified of same.

In the event this transaction fails to close for any reason, the Buyer shall restore the Property to its condition prior to such due diligence activities.

9. Lease. The Seller represents that the Property is currently not leased and the Seller agrees that it shall not enter into any lease or rental for the Property, or any portion thereof, during the Due Diligence Period and through the date of closing, without the prior written consent of the Buyer.

10. Personal Property. The purchase of the Property does not include any personal property. All personal property shall be removed by the Seller prior to Closing.

11. Survey. Any survey of the Property including, but not limited to, an ALTA/ACSM Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2011 that is required to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of the Buyer and the title company providing the title insurance described in Paragraph 12 shall be at the sole cost and expense of the Buyer.

12. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing, a commitment from First American Title Company ("Title Company") to issue an ALTA Owner's Title Insurance Policy 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 this Offer, and further subject only to liens which will be paid out of the proceeds of the Closing and to any exceptions acceptable to the Buyer ("Permitted Exceptions"). 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 this Offer by reason of a valid legal defect in title which the Buyer is unwilling to waive, this Offer shall be void and the Buyer shall be entitled to a return of the Earnest Money.
13. In-Kind Exchange. The Seller, at its option, may structure the sale of the Property as a tax-deferred exchange ("Exchange") pursuant to Section 1031 of the Internal Revenue Code. If the Seller shall elect to undertake an Exchange, the following terms shall apply:
- a. The Seller, at its option, may assign its right in and delegate its duties (in part or in whole) under the Agreement, as well as the transfer of its interest in the Property, to an Exchange Accommodator, selected by the Seller. The Seller shall provide the Buyer with written notice of any such assignment.
 - b. The Buyer agrees to cooperate with the Seller in connection with the Exchange, by executing documents of exchange (including, but not limited to, escrow instructions and amendments to escrow instructions).
 - c. The transaction contemplated in the Agreement shall timely close in accordance with the terms contained in the Agreement, notwithstanding any failure, for any reason, of the consummation of the Exchange.
 - d. All representations, warranties, covenants, and indemnification obligations of the Seller to the Buyer shall inure to the benefit of the Buyer, notwithstanding the Exchange.
14. Closing.
- a. Closing shall occur on or before thirty (30) days from (a) the expiration of the Buyer's Contingency Period; or (b) the date of the Seller's receipt of notice from the Buyer requesting an earlier closing date; or (c) such other date agreed to in writing by the parties.
 - b. The Seller agrees to execute and deliver to the Buyer at Closing a Warranty Deed conveying the Property to the Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and Permitted Exceptions.
 - 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 this Offer.
 - d. All 2015 real estate taxes with respect to the Property shall be prorated between the Buyer and Seller as of the date of closing based upon the period of ownership of the parties and 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.
 - f. The Seller shall pay any Wisconsin Real Estate Transfer fee or taxes due in connection with the conveyance of the Property.
 - g. The Seller shall pay First Weber Group and Slinde Realty Company a commission of \$60,000 to be split equally between the parties. Neither the Buyer nor the Seller has dealt with any other broker or real estate agent other than First Weber and Slinde Realty with respect to the purchase and sale of the Property. The Seller's obligation to pay said commission shall be contingent upon a successful Closing.
 - h. The Buyer and the Seller shall each pay their respective legal fees and expenses incurred as of the result of the preparation and negotiation of this Offer.
 - i. The Seller shall pay to Treysta Group, LLC Twenty Five Thousand Dollars (\$25,000) as reimbursement of costs it incurred for a soil borings report, a market study, and an appraisal performed on the Property. The Seller's obligation to pay said costs shall be contingent upon a successful Closing.
15. Confidentiality. The parties shall keep confidential the terms and conditions of this Offer, except as reasonably necessary for performance hereunder and to the extent disclosure may be required by the Buyer's legislative approval process, applicable laws, regulations, or governmental open record requests.
16. Default. If the Seller defaults in the full and timely performance of any of its obligations hereunder, the Buyer shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Offer or seek specific performance. If this Offer is terminated due to the default of the Seller the Earnest Money shall be promptly refunded to the Buyer. If the Buyer defaults in the full and timely performance of any of its obligations hereunder, the Seller shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to retain all Earnest Money as liquidated damages, the right to terminate this Offer or seek specific performance.
17. No Other Encumbrances. The Seller acknowledges and agrees that so long as this Offer is in force and effect: (1) this Offer shall be the only offer that the Seller will accept for the sale of the Property; (2) the Seller will not grant any options, rights of first refusal, or similar rights with regard to the Property to any party other than the Buyer; and, (3) the Seller will not grant any easements, licenses, leases or other rights to use the Property to any party other than the Buyer unless the Buyer first consents to such use in writing.
18. Severability. If any provision of this Offer is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision(s) involved and shall not affect the validity or enforceability of the remaining provisions.
19. Entire Agreement. This Offer contains the entire agreement between the Seller and the Buyer and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby. This Offer may be amended only by a further written document signed by each of the parties.
20. Successors and Assigns. The provisions of this Offer shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.

21. Time of the Essence. Time is of the essence for the performance of this Offer.

BE IT FURTHER RESOLVED that funding in the amount of \$1,250,000 (\$1,200,000 purchase price and \$50,000 for costs associated with the purchase of the Property including a Phase 1 and/or Phase 2 Environmental Site Assessment(s), an appraisal, an ALTA survey, proration of real estate taxes and other miscellaneous closing costs) is authorized to be used from the General Land Acquisition Fund.

BE IT STILL FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute the Assignment and all additional documents that may be required to complete this transaction.

Legal Description: 3618 Milwaukee Street

A parcel of land located in the Northwest $\frac{1}{4}$ of Section 4, Township 7 North, Range 10 East, City of Madison, Dane County, Wisconsin, to wit: Commencing at the West $\frac{1}{4}$ corner of said Section 4; thence North 1 degree 11' 40" East, 33.06 feet; thence North 89 degrees 15' 10" East, 70 feet to the point of beginning; thence North 89 degrees 15' 10" East, 250 feet; thence North 0 degrees 44' 50" West, 967 feet; thence South 89 degrees 15' 10" West, 17.22 feet; thence South 1 degree 11' 40" West about 967 feet to the point of beginning.

Tax Parcel No.: 251-0710-042-0094-6

Legal Description: 3630 Milwaukee Street

A parcel of land located in the Northwest $\frac{1}{4}$ of Section 4, Township 7 North, Range 10 East, City of Madison, Dane County, Wisconsin, to-wit: Commencing at the West $\frac{1}{4}$ corner of said Section 4; thence North 1 degree 11' 40" East, 33.06 feet; thence North 89 degrees 15' 10" East, 320.00 feet to the principal point of beginning; thence North 89 degrees 15' 10" East, 150.00 feet; thence North 0 degrees 44' 50" West, 762.00 feet; thence South 89 degrees 15' 10" West, 40.00 feet; thence North 0 degrees 44' 50" West, 60.00 feet; thence South 89 degrees 15' 10" West, 15.00 feet; thence North 0 degrees 44' 50" West, 95.00 feet; thence South 89 degrees 15' 10" West, 50.00 feet; thence North 0 degrees 44' 50" West, 50.00 feet; thence South 89 degrees 15' 10" West, 45.00 feet; thence South 0 degrees 44' 50" East, about 967 feet to the principal point of beginning.

Tax Parcel No.: 251-0710-042-0095-4