



## Legislation Text

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### Fiscal Note

The proposed resolution authorizes a sale between the City of Madison and Sutton Transportation, Inc. for two City-owned lots in the Center for Industry and Commerce. The total purchase price is \$337,466. Proceeds from the sale will be distributed to the General Land Acquisition Fund (account no. 14006010-48110-00000). \$322,865 of sale proceeds will be applied towards outstanding special assessments on the two lots sold. A remaining balance of \$14,601 in sale proceeds will be applied towards outstanding special assessments on other properties owned by the City of Madison located elsewhere within the Center for Industry and Commerce.

### Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Sutton Transport, Inc. for the purchase of City-owned Lots 83 and 84 in The Center for Industry & Commerce located at 5918 Manufacturer Drive and 3841 Merchant Street.

### Body

The Common Council adopted a resolution (RES-13-00460) on June 18, 2013 which authorized the execution of an Agreement to Terminate the "Agreement to Purchase and Undertake Development of the Northeast Industrial Property" (the "Purchase and Development Agreement") which was executed between the City and The Center for Industry & Commerce, LLC (the "LLC") for the development of a mixed-use industrial park. Under the terms of the Purchase and Development Agreement, the LLC deeded back to the City, at no cost, 14 lots it had previously purchased from the City in exchange for the mutual termination of the Purchase and Development Agreement and being relieved of any remaining obligations, including the obligation to purchase an additional 78 lots from the City. Due to the termination of the Purchase and Sale Agreement the City owns 90 lots within The Center for Industry & Development. These lots are being marketed by the City. The adoption of this resolution will authorize the sale of two lots owned by the City in The Center for Industry & Commerce.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement (the "Agreement") between the City (the "Seller") and Sutton Transport, Inc. (the "Buyer") for the purchase of Lots 83 and 84 in The Center for Industry & Commerce property owned by the Buyer located at 3841 Merchant Street and 5918 Manufacturers Drive, Madison, Wisconsin (the "Property"), legally described in Exhibit A below and depicted on the attached Exhibit B, on the following terms and conditions:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by a Warranty Deed (the "Deed"), fee simple ownership of the Property, including all improvements located thereon and all appurtenances thereto.
2. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement 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 Three Hundred Thirty Seven Thousand and Four Hundred and Sixty Six Dollars (\$337,466). The Purchase Price shall be payable in cash at Closing, subject to the adjustments and prorations herein provided.
4. Earnest Money. Within five (5) business days of the Effective Date, the Buyer shall pay to the Seller

Three Thousand Three Hundred Dollars (\$3,300) as "Earnest Money", which will be non-refundable except as otherwise provided in Paragraphs 6 and 13 and the corresponding provisions of the Agreement, to be applied toward the Purchase Price at Closing in accordance with Paragraph 3.

5. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Due Diligence Period as described in Paragraph 6, the Seller will reproduce at the Seller's expense and send to the Buyer at the Buyer's office copies of all environmental studies, reports, permits, applications and remediation plans or assessments of the Property in the Seller's possession or control.

6. Due Diligence Period. The Buyer shall have one hundred and twenty (120) days from the Effective Date (the "Due Diligence Period") to review, test and inspect all aspects of the Property, at its sole cost and expense.

If within the Due Diligence 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 the Agreement shall terminate immediately. If the Buyer timely terminates the Agreement as provided in this paragraph, the Earnest Money shall be immediately refunded to the Buyer.

The Buyer agrees that if it terminates the Agreement, 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.

If the Buyer does not provide written notice terminating the Agreement on or prior to the one hundred and twenty (120) day of the Due Diligence Period, the Agreement 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 Due Diligence 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 the Agreement, 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 Due Diligence Period may be extended upon written agreement of the parties.

7. Access to Property. The Buyer and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing during the Due Diligence Period including, but not limited to, a Phase 1 or 2 environmental assessment of the Property and/or a physical inspection of the Property and any building and related improvements located on the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors access to, and inspection of, the Property shall be at the Buyer's sole risk and expense and the Seller shall have no responsibility therefor. The Buyer will repair, at the Buyer's and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors cost, all damages caused by its inspections or testing so that the condition of the Property is returned to as good or better condition as existed prior to the inspections or testing.

8. Indemnification. The Buyer shall be liable to and agrees to indemnify, defend and hold harmless the

Seller, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the Seller or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Buyer or its officers, officials, agents, whether caused by or contributed to by the negligence of the Seller, its officers, officials, agents, or employees.

9. Insurance. The Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors performing work on the Property shall carry commercial general liability insurance covering as insured the Buyer and naming the Seller, its officers, officials, agents and as additional insureds, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the City's Risk Manager. These policies shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the Seller thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of the Agreement. As evidence of this coverage, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall furnish the City with a certificate of insurance on a form approved by the Seller, and, if requested by the City Risk Manager, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall also provide copies of additional insured endorsements or policy to the Seller prior to the performance of any work on the Property. If the coverage required above expires while the Agreement is in effect, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to the Seller for approval.
10. Leasing. The Seller shall represent that the Property is not leased or occupied, and the Seller shall agree that it shall not enter into any lease or rental agreement for the Property, or any portion thereof, or allow the occupation of the Property during the Due Diligence Period and through the date of closing, without the prior written consent of the Buyer.
11. Personal Property. The purchase of the Property does not include any personal property.
12. 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 13 shall be at the sole cost and expense of the Buyer
13. 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 Insurance Company (the "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 the Agreement, 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 the Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, the Agreement shall be void and the Buyer shall be entitled to a return of the Earnest Money.
14. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided herein, the

Buyer shall purchase the Property in "AS-IS, WHERE-IS" condition and "with all faults," and shall agree that it relied upon no warranties, representations or statements by the Seller, its agents or employees, in entering into the Agreement or in closing the transaction described herein. Except as provided below, the Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the Buyer's Contingencies, as described in Paragraph 6 above.

15. Broker Representation. The Seller shall acknowledge that it is not represented by a licensed real estate broker on its behalf in respect of the transaction contemplated herein. The Buyer shall acknowledge that it is not represented by a licensed real estate broker on its behalf in respect of the transaction contemplated herein.
16. Closing.
- a. Closing on or before thirty (30) days from (a) the expiration of the Due Diligence Period; or (b) such other date agreed to in writing by the parties.
  - b. The Seller agrees to execute and deliver to the Buyer at Closing the Deed conveying the Property to the Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and the 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 the Agreement.
  - d. The Seller shall be responsible for any and all special assessments, against the Property existing as of the date of Closing.
  - e. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.
17. Fees. Buyer will be responsible for impact fees, such as but not limited to: MMSD connection fees and interceptor fees.

BE IT FURTHER RESOLVED that the proceeds from the sale of the Property shall be credited against the outstanding special assessments on the Property, with any remaining proceeds credited against outstanding special assessments on other properties owned by the City of Madison elsewhere within The Center for Industry & Commerce.

BE IT FINALLY 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.