



## Legislation Text

File #: 43551, Version: 1

### Fiscal Note

This resolution authorizes a Purchase and Sale Agreement between the City of Madison and Red Caboose Day Care Center, Inc. for the acquisition of the City-owned property located at 2340 Winnebago Street for \$825,000. Estimated costs for this transaction include the following: payment of \$100,000 to Gorman & Company pertaining to sunk costs that was approved by Resolution file number 41824 on March 15, 2016; and \$24,750 in commissions to Key Commercial; and roughly \$6000 in title and closing costs. Proceeds from the sale of the property will be applied to TID 37: Union Corners.

### Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Red Caboose Child Care Center, Inc. for the purchase of the building and land located at 2340 Winnebago Street and use of the net proceeds to pay down TID #37 debt.

### Body

WHEREAS, on October 30, 2013 the City of Madison (the "City") executed a Purchase and Sale Agreement (the "PSA") with Gorman & Company, Inc. ("Gorman") for the conveyance and redevelopment of properties owned by the City located at 2504, 2507 and 2340 Winnebago Street, Madison, WI (collectively, the "Gorman Property") for a mixed-use redevelopment project. Under the terms of the PSA, Gorman was required to develop the Gorman Property in four phases.

WHEREAS, the First Amendment to the PSA, which among other items, provided that the number of phases be increased from four to six. In the Second Amendment to the PSA, only Phases 1 through 4 were acquired by Gorman, and an option to purchase Phases 5 & 6 independently was granted to Gorman.

WHEREAS, the City and Gorman also entered into a Memorandum of Option to Purchase (the "Memorandum") which was recorded in the Office of the Dane County Register of Deeds on August 17, 2015 as document No. 5176971, and which Memorandum provides public notice of the Option Agreement.

WHEREAS, the City and Gorman came to a mutual agreement to terminate the Gorman's rights to acquire Phase 6 per the terms described in the Definitive Agreement that were outlined in resolution file number 41824 and approved by the Common Council on March 15, 2016. The Definitive Agreement was executed by the City and Gorman on March 30, 2016. Per the Definitive Agreement, the City has until December 31, 2016 to sell the property to any new buyer.

WHEREAS, now, the City has located a new buyer, Red Caboose Child Care Center, Inc. (the "Buyer"), to acquire Phase 6 per the below terms described in this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute a Purchase and Sale Agreement ("Agreement") between the City and ("Buyer") for the purchase of the building ("Building") and land owned by the City located at 2340 Winnebago Street, Madison, Wisconsin (collectively, "Property"), legally described in Exhibit A below, on substantially the following terms and conditions:

1. Property. Buyer shall purchase and City shall sell and convey by Warranty Deed ("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 City or

Buyer, as indicated on the signature page of the Agreement.

3. Purchase Price. The total purchase price for City's interest in the Property ("Purchase Price") shall be Eight Hundred Twenty-Five Thousand and no/100 Dollars (\$825,000). The Purchase Price shall be payable in cash at Closing, as described in Paragraph 17, subject to the adjustments and prorations provided in the Agreement.
4. Acceptance of Agreement. City and Buyer agree that both parties shall use their best efforts to negotiate and execute a Purchase and Sale Agreement on or before July 25, 2016. In the event that City and Buyer can't come to an agreement by such date then the parties can (i) agree in writing to extend this date or (ii) stop negotiations.
5. Use. Buyer shall use the Property for the purpose of operating a child care facility and additional office or retail space.
6. Earnest Money. Within seven (7) days of the Effective Date, Buyer shall pay to City the amount of Ten Thousand and no/100 Dollars (\$10,000) as "Earnest Money," which will be non-refundable except as otherwise provided in Paragraph 8, and shall be applied toward the Purchase Price at Closing, as defined in Paragraph 17, in accordance with Paragraph 3.

Upon expiration of the "Due Diligence Period," as described in Paragraph 8, provided Buyer has satisfied or waived Buyer's Contingencies, Buyer shall pay to City an additional Ten Thousand and no/00 Dollars (\$10,000) as "Additional Earnest Money," which Additional Earnest Money shall be non-refundable and applied toward the Purchase Price at Closing.

7. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Due Diligence Period, as described in Paragraph 8, City will reproduce at City's expense and send to Buyer at Buyer's office copies of all environmental studies, reports, surveys and building plans of the Property in City's possession or control. Said documents are provided for Buyer's convenience and without representation or warranty of any kind by City.
8. Due Diligence Period. Buyer shall have until the later of (i) September 30, 2016 or (ii) sixty (60) calendar days following the Effective Date ("Due Diligence Period"), to complete Buyer's due diligence and satisfy or waive Buyer's Contingencies, as described in Paragraph 9. If within the Due Diligence Period Buyer determines, in its sole discretion, that it does not desire to purchase the Property, Buyer must provide written notice to City of such desire and the Agreement shall terminate immediately. If Buyer timely terminates the Agreement as provided in this paragraph, the Earnest Money, shall be immediately refunded to Buyer.

Buyer agrees that if it terminates the Agreement, as provided for therein, or fails to close the transaction contemplated thereby for any reason, then, Buyer shall deliver to City, at no cost to City, complete and accurate copies of all of 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 due diligence of the Property and shall cause all such liens to be removed immediately upon being notified of same.

If Buyer does not provide written notice to City terminating the Agreement on or prior to the end of the Due Diligence Period, the Agreement shall remain in full force and effect, Buyer shall accept the Property as-is, and the parties shall proceed to close the transaction as provided in the Agreement.

Should Buyer desire to close prior to the end of the Due Diligence Period, Buyer may provide City with

written notice of its intent to do so. The provision of such notice by Buyer shall not affect the terms contemplated in the Agreement, except that the closing date shall occur on or before fifteen (15) days from the date City receives such notice, unless the parties agree in writing to another date.

9. Buyer's Contingencies. Buyer shall have the Due Diligence Period to satisfy or waive the following contingencies or to otherwise terminate the Agreement if any of Buyer's contingencies cannot be completed despite Buyer's best efforts:
  - a. Project Financing. Buyer securing financing acceptable to Buyer for the purchase of the Property.
  - b. Appraisal. Buyer obtaining, at its sole cost, an appraisal that supports the Purchase Price.
  - c. Environmental. Buyer, at its sole cost, may obtain a Phase 1 and/or Phase 2 environmental site assessment of the Property, and related testing, soils testing and any other environmental inspections or testing deemed necessary by Buyer. In no event shall City be required to cure any matter to which Buyer objects relating to the condition of the Property. Buyer intends to obtain brownfields funds from the City of Madison satisfactory to cover the cost of Buyer's Phase I and/or Phase II environmental site assessments of the Property, subject to application approval and available funds.
10. Access to the Property. Buyer and 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 Building and related improvements located on the Property at reasonable times with at least twenty-four (24) hours' prior written notice to City. Buyer's and Buyer's authorized agents, engineers, consultants, appraisers, and contractors access to, and inspection of, the Property shall be at Buyer's sole risk and expense and City shall have no responsibility therefor. Buyer shall, at Buyer's sole cost, repair all damage caused by its inspections or testing so that the condition of the Property is returned to as good or better condition as that which existed prior to the inspections or testing.
11. Assignment. Buyer shall not assign its rights to the Agreement.
12. Lease. City shall represent that the Property is not leased or occupied, and City 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 Buyer.
13. Personal Property. The purchase of the Property includes the personal property that is located in the Building as of the Effective Date.
14. Survey. Any survey of the Property including, but not limited to, an ALTA/NSPS Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys effective February 23, 2016 that is required to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of Buyer and the title company providing the title insurance described in Paragraph 15 shall be at Buyer's sole cost.
15. Title Insurance. City shall provide to Buyer, at City's expense, within fifteen (15) days after the Effective Date a commitment from a 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. Any

gap endorsement desired by Buyer shall be provided at Buyer's sole expense. 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 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 Buyer ("Permitted Exceptions"). Buyer shall notify City of any valid objection to title, in writing, within fifteen (15) days of Buyer's receipt of the title commitment. City shall have a reasonable time, but not exceeding five (5) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should City be unable or unwilling to carry out the Agreement by reason of a valid legal defect in title which Buyer is unwilling to waive, the Agreement shall be void and the Buyer shall be entitled to a return of the Earnest Money.

16. Limited Representations and Warranties: AS-IS Condition. Except as otherwise provided in the Agreement, Buyer shall purchase the Property and Personal Property in "AS-IS, WHERE-IS" condition and "with all faults," and shall agree that it relied upon no warranties, representations or statements by City, its agents or employees, in entering into the Agreement or in closing the transaction described therein. Except as provided below, Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the Buyer's Contingencies, as described in Paragraphs 8 & 9 above.

17. Closing.

- a. Closing shall occur on or before November 1, 2016, unless extended under Paragraph 8 or if the parties mutually agree to a different date.
- b. City agrees to execute and deliver to Buyer at Closing the Deed conveying the Property to Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and the Permitted Exceptions.
- c. Buyer shall pay all recording/filing fees except that City 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. Buyer shall be responsible for any and all special assessments, against the Property existing as of the date of Closing.
- e. City shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.
- f. City agrees to executed and deliver to the title company any affidavits required to issue an owner's policy in the condition called for by the Agreement including, but not limited to, an Owner's Affidavit, Gap Indemnity, and Non-Foreign Transferor affidavit.
- g. City shall pay all costs of providing the title commitment and Owner's Policy of Title Insurance to Buyer; Buyer shall be responsible for any simultaneous issue premium for a Lender's Policy.
- h. Buyer and City shall share equally the closing fee charged by the title company.

18. Fees. Buyer will be responsible for any future impact fees related to any development on the site.

19. Broker Representation: The City shall acknowledge that it will pay a three percent commission of the Purchase Price to Key Commercial Real Estate, LLC

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 all in a form to be approved by the City Attorney.

**EXHIBIT A**

Lot 2 of Certified Survey Map No. 11835 recorded in the office of the Register of Deeds for Dane County, Wisconsin, in Volume 72 of Certified Survey Maps, at Page 247, as Document No. 4206575, located in the City of Madison, Dane County, Wisconsin.

Tax Roll Parcel No.: 251/0710-064-2220-9