



## Legislation Text

File #: 44259, Version: 1

### Fiscal Note

The estimated net proceeds from the sale assuming a January 2017 closing date, after paying off the special assessments for Lots 11-14 estimated at \$375,434 and other closing costs is roughly \$226,844. These net sale proceeds will be applied towards outstanding special assessments on the remaining balance of outstanding special assessments on other properties owned by the City of Madison located elsewhere within the International Commerce Park.

### Title

Authorizing the execution of a Purchase and Sale agreement with Airoidi Brothers, Inc for City owned Lots 11-14 in the Interstate Commerce Park and the associated Partial Release of the Obligation to Purchase and Undertake Development of the Interstate Commerce Park for these lots.

### Body

WHEREAS, the City of Madison ("City"); Interstate Commerce Park, Inc. ("ICP"); and Barbara J. Hoel ("Hoel") are all parties to that certain Agreement to Purchase and Undertake Development of the Interstate Commerce Park, dated November 1, 2004 ("Agreement"), as amended in the First Amendment to the Agreement executed by the parties on September 10, 2007 and the Second Amendment to the Agreement executed by the parties on August 3, 2016; and

WHEREAS, under the terms of the Agreement, ICP is required to purchase all of the lots owned by the City in the Interstate Commerce Park by December 31, 2018; and,

WHEREAS, a buyer, Airoidi Brothers, Inc., has expressed the desire to purchase Lots 11-14 ("Property") of the Interstate Commerce Park directly from the City, which ICP is agreeable to. In consideration, the City will execute a Partial Release of the Obligation to Purchase and Undertake Development so the City can work directly with Airoidi Brothers Inc. and ICP is released from its obligations and responsibilities relating to the Property.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement ("Agreement") between the City and Airoidi Brothers, Inc. and/or its assigns ("Buyer"), with the prior written approval of the City for the purchase of Lots 11-14, totaling 273,482 square feet (collectively, "Property"), in the Interstate Commerce Park, 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 aforementioned 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 and Sale Agreement. Buyer and Seller agree to use good faith efforts to execute a purchase agreement within fifteen (15) business days from the approval of the Common Council containing the terms described herein and other customary provisions for land purchases within Dane County ("Purchase Agreement").
4. Purchase Price. The purchase price for City's interest in the Property ("Purchase Price") shall be \$2.40

per square foot of land, totaling approximately \$656,357. Should the lot size upon completion of a certified survey map, at Buyer's cost, be less than 273,482 square feet then the Purchase Price shall be adjusted down or up accordingly based on \$2.40 per square foot.

The Purchase Price shall be payable in cash at Closing, as described in Paragraph 16, subject to the adjustments and prorations provided in the Agreement.

5. Earnest Money. Within five (5) days of the Effective Date, Buyer shall deposit with First American Title Insurance Company ("Title Company") the amount of Twenty-Five Thousand and no/100 Dollars (\$25,000) as "Earnest Money," which will be non-refundable except as otherwise provided in Paragraph 6 and 14, and shall be applied toward the Purchase Price at Closing, in accordance with Paragraph 4. In the event of Buyer's default prior to Closing, City may seek to retain the Earnest Money as its sole remedy.

6. Due Diligence Period. Buyer shall have one hundred and fifty (150) calendar days following the Effective Date ("Due Diligence Period") to obtain, at Buyer's sole cost, acceptable financing, title, survey, and any physical, environmental or governmental conditions and approvals necessary for Buyer's intended use of the Property. 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 upon City's receipt of said notice. 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.

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 thirty (30) days from the date City receives such notice, unless the parties agree in writing to another date.

7. Construction Contingency. Buyer shall agree to commence construction on the Property within twenty four (24) months of the Effective Date. In the event Buyer fails to commence construction in that timeframe, City shall have the right, but not the obligation, to purchase the Property back from Buyer at the Purchase Price less any closing, title and transfer costs incurred by the City, that will be further defined in the Agreement.

8. 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 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.

9. Successors and Assigns. The provisions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives. The Buyer can only assign this Agreement to a related entity.

10. Insurance. 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 Buyer and naming City, 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 City 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, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall furnish City with a certificate of insurance on a form approved by City, and, if requested by the City Risk Manager, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall also provide copies of additional insured endorsements or policy to City prior to the performance of any work on the Property. If the coverage required above expires while the Agreement is in effect, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to City for approval.

11. Lease. City shall represent that the Property is currently leased by a farmer, and the City will terminate this lease prior to Closing. The City shall agree that it shall not enter into any other lease or rental agreements for the Property, or any portion thereof prior to Closing.

12. Personal Property. The purchase of the Property does not include any personal property.

13. 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 14, shall be at Buyer's sole cost.

14. 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.

15. Limited Representations and Warranties: AS-IS Condition. Except as otherwise provided in the Agreement, 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 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 due diligence requirements provided in Paragraph 6 above.

16. Closing.

a. Closing shall occur within thirty (30) days of the expiration of the Due Diligence Period, or Buyer's earlier waiver of its due diligence requirements, unless 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. City shall be responsible for any and all special assessments, against the Property existing as of the date of Closing. Buyer shall be responsible for any future special assessments against the Property following 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 execute 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.

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

18. Broker Representation. City acknowledges that Welton Enterprise, Inc and Lee & Associates will be each paid a sale commission of 4% of the Purchase Price (\$26,254.28) in full at Closing.

19. Use. The construction of a truck maintenance and leasing facility including a fuel island.

20. Partial Release of the Obligation to Purchase and Undertake Development in Interstate Commerce Park.

In order to consummate this transaction, Interstate Commerce Park Inc. has agreed to allow the Buyer to directly work with the City to acquire Lots 11-14. In consideration the City has agreed to sign off on the partial release to purchase Lots 11-14 ("Partial Release") from the terms of the Agreement to Purchase and Undertake the Development of Interstate Commerce Park, as amended in the First Amendment to the Agreement executed by the parties on September 10, 2007 and the Second Amendment to the Agreement executed by the parties on August 3, 2016. The City will execute this Partial Release at the time of, or prior to, Closing.

21. Lot Condition. The City represents and warrants that the water utility and sanitary sewer lines are readily available at the Property lot line and the storm sewer is under Manufacturers Drive

BE IT FURTHER RESOLVED that the proceeds from the sale of the Property shall be credited against the

outstanding special assessments on the balance of the Property, and any remaining proceeds after the payment of the broker's fee and closing costs shall be used to pay down the remaining balance of the special assessments on other lots owned by the City in the Interstate Commerce Park.

BE IT FURTHER RESOLVED that the City is authorized to enter into a Partial Release of the Obligation to Purchase and Undertake Development in Interstate Commerce Park with ICP at the time of, or prior to, Closing.

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