



Legislation Text

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Fiscal Note

Proceeds from the sale will be distributed to the General Land Acquisition Fund (account no. 14006010-48110-00000). Assuming a closing date of May 1, 2017 for Phase 1 the estimated net sale proceeds are \$951,631. This assumes a site of 12.7 acres. Roughly \$64,677 will be used to pay off the special assessments for the Phase II lots, leaving a remaining balance of \$888,954.17. This remaining balance will be applied towards outstanding special assessments of roughly \$2,346,470 on other properties owned by the City of Madison located elsewhere within the Center for Industry and Commerce. The new special assessment balance is estimated at \$1,459,517. Should the Buyer close on Phase II, estimated at 8 acres, near the end of the three year Option period, the net sale proceeds are estimated at \$723,488.

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and St. John Properties Acquisitions, LLC for the: (i) purchase of City-owned Lots 62-70 and parts of Lots 47, 48, 49 and 50 plus the public street right-of-way known as Merchant Street proposed to be discontinued and vacated abutting said lots; and (ii) to provide an option to purchase Lots 35-37 and parts of Lots 38, 47, 48, 49, 50 and the entire width of the public street right-of-way known as Graaskamp Way proposed to be discontinued and vacated abutting the eastern side of said lots, all located within in The Center for Industry & Commerce.

Body

The Common Council adopted a resolution (RES-13-00460, File ID 30382) 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' " ("Purchase and Development Agreement") which was executed between the City of Madison ("City") and The Center for Industry & Commerce, LLC ("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, and was relieved of any remaining obligations, including the obligation to purchase an additional 78 lots from the City. The City currently owns 66 lots within The Center for Industry & Commerce ("The CIC"). These lots are being marketed by the City for sale. The adoption of this resolution will authorize the sale of Lots 62-70 and parts of lots 47, 48, 49 and 50 owned by the City in The CIC. In addition, it will grant an option to purchase Lots 35-37 and parts of Lots 38, 47, 48, 49, 50 and all of the vacated right-of-way formally known as Graaskamp Way, that is adjacent to the eastern side of such lots.

A separate resolution will be drafted and submitted by Engineering for the City of Madison to discontinue and vacate portions of the public street right-of-ways currently known as Graaskamp Way and Merchant Street. This will be done before the closing of Phase I.

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 St. John Properties Acquisitions, LLC and/or its assigns to an affiliate entity ("Buyer"), with the prior written approval of the City for the purchase of Lots 62 through 70 and parts of Lots 47, 48, 49 and 50 plus the public street right-of-way known as Merchant Street proposed to be discontinued and vacated abutting said lots (collectively, "Phase I"), and offer Buyer an option to purchase Lots 35-37 and parts of Lots 38, 47, 48, 49, 50 and the entire width of the public street right-of-way known as Graaskamp Way proposed to be discontinued and vacated abutting the eastern side of such lots (collectively "Phase II") in The CIC, 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 Phase I and offer the Buyer an option to purchase, which is hereinafter defined, for Phase II. The exact boundaries of Phase I, Phase II and re-located Merchant Street will be determined by mutual agreement during the Due Diligence Period. Phase I and Phase II are hereinafter collectively referred to as "Property". See the attached Exhibit A, which is for informational purposes only.
2. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by City, as indicated on the signature page of the Agreement. City shall notify Buyer in writing of this date.
3. Purchase and Sale Agreement. City agrees to provide Buyer with a draft of the Agreement within twenty (20) business days of Common Council's approval of the terms stated herein.
4. Purchase Price. The purchase price for City's interest in the Phase I ("Purchase Price") shall be \$2.00 per square foot of land that will be calculated upon the final lot lines for Phase I.
5. Option to Purchase. Buyer shall have the option to purchase Phase II, (the "Option") at \$2.15 per square foot ("Option Purchase Price"), to be calculated upon the confirmation of final lot lines, for three (3) years after the Closing of Phase I ("Option Period"). Buyer must acquire all of Phase II during the Option Period. If Buyer opts to acquire Phase II it shall put up a non-refundable earnest money deposit with First American Title Insurance Company in the amount of \$15,000 within five (5) business days after delivering written notice to City exercising the Option.

In the event that City receives an arm's length offer for all of Phase II from an unrelated third party after the beginning of the second year of the Option Period (i.e. month 13 of the 36 month Option Period), then City may trigger the Buyer to close on Phase II within 120 days after Buyer receives written notice from the City informing Buyer of the third party offer (which notice shall include a copy of the third party offer) ("Put Notice"). The terms of the third party offer will not modify the terms of the Option other than the City's right to shorten the closing time frame as described above. Accordingly, the purchase price set forth in any third party offer is irrelevant to the Option and the Option Purchase Price as defined above, shall apply if Buyer exercises the Option in response to the Put Notice. Buyer shall provide City with written notice of its intent to exercise the Option within twenty (20) business days after receipt of the Put Notice.

6. Earnest Money. Within five (5) days of the Effective Date, Buyer shall deposit with First American Title Insurance Company, the amount of Fifteen Thousand and no/100 Dollars (\$15,000) as ("Earnest Money").
7. Due Diligence Period. Buyer shall have one hundred eighty (180) calendar days after receiving a fully executed Agreement ("Due Diligence Period") to evaluate the Property at its cost, and satisfy or waive certain contingencies, including, without limitation, the contingencies listed below (which will be more particularly described in the Agreement). If Buyer does not satisfy or waive a contingency, Buyer may terminate the Agreement during the Due Diligence Period.
 - a) Replat approvals;
 - b) Confirmation of re-zoning and street vacation by City to Buyer's reasonable satisfaction;
 - c) Obtain all public and private permits and approvals for development of the Property;
 - d) Bike Path contingency;
 - e) Document review contingencies (title, survey, etc);
 - f) Environmental evaluation;

- g) Geotechnical evaluation;
- h) Verification of utilities availability; and
- i) Negotiation of mutually acceptable Development Agreement with City of Madison.

8. Construction Phasing. City agrees that Buyer may elect to develop the Property in phases as defined above. Buyer and City agree to negotiate mutually acceptable development deadlines in the Development Agreement.
9. Zoning. Buyer desires zoning of industrial limited (IL) for the entire Property. During the Due Diligence Period, City shall obtain, at City's cost, all approvals required to re-zone to IL those portions of the Property not currently zoned IL. Buyer acknowledges that the re-zoning will be conditioned on closing the sale of Phase I.
10. Graaskamp Way And Merchant Street Discontinuance and Vacation. During the Due Diligence Period, City shall obtain at City's cost all approvals required to: (1) discontinue and vacate Graaskamp Way south of John Wall Drive and terminate any easements affecting the said street; and (2) discontinue and vacate such portions of Merchant Street as necessary to realign Merchant Street for the proposed replat and development (including the termination of any easements affecting such vacated portions of said street).

The vacation of any of these right-of-ways shall be conditioned upon the Buyer obtaining the necessary permits and approvals for the replat referenced below in Paragraph 12, and the proposed development of Phase I. The conditional approvals for the development shall provide the need for the public right of ways to be discontinued, as determined by the City Engineer. The discontinuances and vacations shall not be validated and made effective by recording the resolution(s) with the Dane County Register of Deeds until the City Engineer authorizes the City Clerk to record the resolution(s).

11. 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.
12. Replat and Relocation of Merchant Street. During the Due Diligence Period, Buyer shall obtain, at Buyer's cost, all approvals necessary to record a replat evidencing the relocation of Merchant Street to abut the eastern edge of Phase I and forming the Property into one or more lots (Phase I will be one lot and if Buyer acquires Phase II, it will be another lot) as desired by Buyer. If desired by City, the replat will also adjust the lot lines between the lots adjacent to the Property on the south (i.e., Lots 46-47 and Lots 38-39). Buyer acknowledges the replat will be conditioned on closing the sale of Phase I. City agrees to assist Buyer, at no cost to City, in accomplishing the relocation/vacation of Merchant Street.

City, through the replat, will designate roughly a 20' wide outlot for the use of a future bike path on the

western edge of Phase I as further described below.

13. Bike Path. Buyer and City acknowledge that the State of Wisconsin owns Outlot 3 adjacent to the western boundary of Lots 64 through 70, and the State desires to install a bike path that may extend into some portions of Lots 64 through 70. During the Due Diligence Period, Buyer shall have a bike path contingency allowing Buyer to evaluate the impact of the proposed bike path on Buyer's intended development of Phase I, including exploring the feasibility of accommodating the bike path by adjusting the western Phase I lot line.
14. Infrastructure. City shall be responsible for completing the construction of the following roads, as well as water and sewer within the right-of-way for each of the following roads: 1) Ronald Reagan Avenue (north-south connector from Hoepker Road to John Wall Drive); 2) John Wall Drive (east from Ronald Reagan Avenue to intersect with Manufacturers Drive), 3) relocated extension of Merchant Street so it connects with Ronald Reagan Avenue/John Wall Drive; and 4) Graaskamp Way from Hoepker Road to John Wall Drive. Buyer acknowledges that said construction costs will be specially assessed against all neighboring landowners, including the Property.

With respect to each building, City shall guarantee completion of construction of the applicable adjacent roads and utilities per a mutually agreed upon date. The specifics of the infrastructure construction will be set forth in the Agreement and Development Agreement.

City agrees that construction access to Phase I at a mutually agreed upon location shall be made available to Buyer immediately upon closing on the purchase of Phase I.

15. Special Assessments. City agrees to pay at Closing on the sale of Phase I all special assessments (including accrued interest thereon) that were outstanding against any lots comprising Phase I as of the date of execution of this Letter of Intent ("LOI"). If Buyer closes on the purchase of Phase I, Buyer shall be responsible for any special assessments levied against Phase I after execution of this LOI.

If Buyer closes on Phase II during the Option Period, then City will pay at Closing on the sale of Phase II a designated portion (set forth below) of all special assessments (including accrued interest thereon) that were outstanding against any lots comprising Phase II as of the date of execution of this LOI ("Phase II Outstanding Special Assessments"). If Buyer closes on the purchase of Phase II, Buyer shall be responsible to pay for any special assessments levied against Phase II after execution of this LOI.

The portion of such Phase II Outstanding Special Assessments to be paid by City at the Phase II Closing is as follows:

First Year of Option Period: If Buyer closes on the purchase of Phase II one (1) year or less after the Closing Date for Phase I, City shall pay 100% of the Phase II Outstanding Special Assessments;

Second Year of Option Period: If Buyer closes on the purchase of Phase II more than one (1) year but less than two (2) years after the Closing Date for Phase I, City shall pay 90% of the Phase II Outstanding Special Assessments;

Third Year of Option Period: If Buyer closes on the purchase of Phase II two (2) years or more after the Closing Date for Phase I, City shall pay 80% of the Phase II Outstanding Special Assessments.

16. Closing.
 - a. Closing shall occur within thirty (30) days of the satisfaction or waiver of Buyer's contingencies.

- b. Buyer shall pay all recording fees to record the deed and any loan documents for Buyer's lender.
 - c. City will be responsible to pay all costs of providing an owner's title insurance policy (including gap coverage) and Buyer will be responsible to pay all costs of providing a loan title insurance policy to Buyer's lender, if applicable.
 - d. City shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property, and the recording fees to remove any existing encumbrances.
17. Fees. Buyer will be responsible for any development or connection fees, including, but not limited to, impact fees, Madison Metropolitan Sewerage District connection fees and interceptor fees, CARPC fees, etc.
18. Broker Representation. City acknowledges that Chuck Redjinski of MLG Commercial represents the City in this transaction, and City shall pay a sale commission of 4% of the Purchase Price in full at Closing for the Property
19. Indemnification. Buyer shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, 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 City 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, members, agents, employees, invitees, or subcontractors, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. This paragraph shall survive termination and assignment or transfer of the Agreement.

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 CIC's special assessments on other lots in the park.

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.