



Legislation Text

File #: 47522, **Version:** 1

Fiscal Note

The 2017 Adopted Capital Budget includes \$6,400,000 within the Library budget to construct a new Pinney Neighborhood Library (Munis project #10002). The total estimated project cost is \$11,710,000 funded by GO Borrowing (\$9,210,000) and Private Contributions/Donations (\$2,500,000). The proposed resolution authorizes the execution of a Purchase and Sale Agreement between the City of Madison and RDC Development, LLC for the acquisition of a gray box condominium unit for the library for \$3,087,807. In addition to the purchase price, the City is budgeting a contingency of \$112,193.

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and RDC Development, LLC for the acquisition of a gray box condominium unit for the relocation of the Pinney Library, and authorizing funds to pay for said unit.

Body

The Madison Public Library has determined that its current 11,200 square foot ("s.f.") Pinney branch library located at 204 Cottage Grove Road is not adequate to serve the residents that utilize this facility. The lease for this space has extension options out until December 31, 2018.

The City of Madison has negotiated with RDC Development, LLC ("Seller") to acquire a 20,000 s.f. "gray box" condominium unit ("Library Space") on the first floor level of west wing of the to be developed mixed-use building ("Building") located at 516 Cottage Grove Road, Madison, WI. This Building is part of the a mixed-use development ("Development") that will also include 86 residential units, 96 underground parking stalls, 141 surface parking stalls, the Library Space, 16,600 s.f. of commercial space, an atrium, and joint access drives. The Development is situated on a lot that is roughly 136,599 s.f. ("Condo Lot"). The west wing and east wing will be connected by the atrium.

The Development is part of the overall project known as Royster Corners ("Project"). The Condo Lot abuts three lots and a new lot to be formed that will be approximately 23,958 s.f. ("New Lot"); collectively these lots are the "Corner Lots". See Exhibit A.

The Library Space is tentatively set to be completed in the fall of 2018; it will take approximately eight months thereafter to build out the interior space and geothermal system. A separate resolution is being submitted to the Common Council today to authorize City staff to hire an architect to design the interior of the Library Space and professionals to design and install a geo thermal system in the surface parking lot. Upon completion of the designs for the Library Space and geo thermal system, the City will solicit bids for a public works contract to complete said work.

Portions of the Development are contaminated with imported soil that contains polycyclic aromatic hydrocarbon ("PAH") levels that exceed residual contaminant levels, and groundwater that is contaminated with nitrates, ammonia and fluoride above quality enforcement WDNR standards. On February 3, 2017, the WDNR determined response actions to restore the environment were completed, except for the ground water which will be brought into compliance through natural attenuation, and issued a closure letter for the property. The Seller applied for and obtained a VPLE (Voluntary Party Liability Exemption) Certificate of Completion from the WDNR on March 8, 2017 that provides each owner with exceptional standards and release of liability from previous contamination. No further investigation or remediation is required at this time; however, future owners must comply with the continuing obligations described in the closure letter and VPLE Certificate of Completion.

The City and Seller ("Parties") have agreed to the terms set forth below in this resolution. There are a number of items to resolve and document in the Purchase and Sale Agreement ("Agreement").

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison ("City") hereby authorizes the execution of a Purchase and Sale Agreement ("Agreement") between the City and RDC Development, LLC ("Seller") for the purchase of a gray box condominium unit, totaling 20,000 square feet ("Library Space"), the undivided interest in the Common Elements and the other Limited Common Elements attributable to the Library Space (collectively, "Library Condo Unit") on substantially the following terms and conditions. Please note that the definitions described above in the Preamble shall continue their meaning hereunder.

1. The City shall acquire fee simple ownership of a condominium unit consisting of approximately 20,000 s.f. of ground level Library Space; an undivided interest in the Building's and Development's common elements", together with and subject to the rights, interests, obligations and limitations as set forth in the "Condominium Documents" (consisting of the Condominium declaration and plat (collectively the "Declaration"), non-exclusive use of the easement rights for the Condo Lot ("Easements"); and limited common elements such as: a mechanical room, communication sleeves, book drive and loading dock drive and other areas set forth in the Declaration.

2. Based on the current plans prepared by Knothe Bruce Architects that were issued for plan review on February 8, 2016 (the "Plans") as they relate to the Library Space, the project manual prepared by Knothe Bruce Architects issued for construction on January 26, 2016 (the "Project Manual") as it relates to the Library Space, and scope of work that will be finalized in the Agreement, the purchase price of the Library Condo Unit is Three Million Eighty-Seven Thousand Eight Hundred Seven and 00/100 Dollars (\$3,087,807.00). This Purchase Price shall be a guaranteed maximum figure to the City, except for any change orders requested by the City in writing, the Seller's geothermal project management fee (if required), and other necessary changes as agreed upon in the Agreement, subject to any budget amendments if necessary.

3. Within fifteen (15) days of the Effective Date, which is the later date of execution of the Agreement by Seller or City, Seller will send to the City copies, electronic files or Internet links of all plans and specifications, environmental studies, reports, permits, filed applications and remediation plans or assessments relating to the Condo Lot, Corner Lots, and the proposed Building that are in Seller's possession or control. With respect to the Corner Lots and the New Lot, Seller shall provide to Buyer a written summary of the projected residential and commercial uses, including a projected number of residential units, the targeted market of the residential units (if any), square footage of office/commercial/retail and commercial tenants if known and a projected construction schedule. The City acknowledges that all projected information provided by Seller is subject to change as Seller's plans evolve.

4. Within thirty (30) days of the Effective Date, Seller will provide draft copies of the Condominium Documents for the Building and the revised site plan. The Condominium Documents may include provisions as agreed to by the Parties for signage to be placed within the Surface Parking lot prohibiting parking by occupants of and visitors to the other Corner Lots.

5. City shall have one hundred twenty (120) days after the Effective Date (the "Due Diligence Period") to conduct its review of the construction schedule, site plan, any other documents delivered by Seller to the City, including but not limited to the Easements, to finalize the Condominium Documents with Seller and to conduct such other investigations and due diligence activities as it shall determine to be necessary or desirable in its sole discretion. In addition, during the Due Diligence Period the City and Seller shall agree to the terms of an easement agreement under which Seller shall grant to the City an easement for a 4" electrical conduit from the Pinney Street right-of-way to the Building and Library Space/Mechanical Room (the "Solar Electrical Easement") in a location to be determined by Seller. The final scope of work shall be agreed upon prior to the

execution of the Agreement by the Parties. If within the Due Diligence Period the City determines, in its sole discretion, that it does not desire to purchase the Library Condo Unit, the City must provide written notice to Seller of such desire before the end of the Due Diligence Period and the Agreement shall terminate immediately upon Seller's receipt of said notice. If the City does not terminate the Agreement within the Due Diligence Period, then the City's contingencies shall be deemed waived and the City shall be obligated to purchase the Library Condo Unit pursuant to the Agreement.

6. The Seller shall provide to the City, at the Seller's expense, at least thirty (30) calendar days after the Effective Date a commitment from First American Title Insurance Company to issue a 2006 ALTA Owner's Title Insurance Policy in the amount of the total Purchase Price upon the recording of proper documents, together with a gap endorsement. The City shall notify the Seller of any valid objection to title, in writing, prior to the expiration of the Due Diligence Period, and any matters not objected to within the Due Diligence Period shall be deemed waived and accepted by the City. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections, and Closing as defined below shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to remove any valid legal defect in title, which the City is unwilling to waive, then the Agreement shall be void. The City's title policy at Closing shall not be a subject to any mechanic or materialmen liens attributable to Seller's work prior to or after the date of Closing.

7. Subject to applicable law and ordinance, the City shall be permitted to install on the exterior of the Library Space two (2) signs identifying the Library. The City may consider placing one of its two signs in the front of its space similar to that at the central library. The City and the Seller shall agree to the location and size of the signs as part of the Final Scope of Work as defined below. The City shall pay for the cost of installing and maintaining the signs.

8. The Seller shall, prior to Closing and at its sole cost and expense, construct the Library Condo Unit in accordance with the gray box construction specifications that will be agreed to by the Parties as part of the Agreement (the "Final Scope of Work"). Subject to reasonable extensions of time due to delays caused by the City or due to Force Majeure as defined in the Agreement, the Seller shall commence and substantially complete construction of the Library Condo Unit prior to the date (the "Construction Completion Date") which is the last day of the ninth (9th) month after the date that Seller has commenced construction of the Building. Seller shall commence construction within thirty (30) days after all of the City's contingencies have been satisfied, and the Agreement constitutes an unconditional obligation for the City to purchase the Library Condo Unit once construction is substantially completed. The Agreement shall contain a construction schedule as agreed upon by the Parties describing certain construction milestones with respect to the Building and the Development which Seller, and to the extent applicable City, shall complete in accordance with the terms of said schedule.

9. The City is evaluating if it will construct at its cost a Closed Loop Geothermal System including wells, pumps and piping to the Library Space ("GEO system"). In the event the City decides to construct the GEO system it will need to locate it in the subsurface of the surface parking ("GEO Field Area"), plus a to-be-determined subsurface area under Grand Oak Trail to bring the system to the mechanical room. The Seller shall not install any base or pave above the GEO Field Area until the GEO system is installed. The City shall decide whether it will install the GEO system within the Due Diligence Period. If the City decides to install the GEO system and it is approved by the Common Council per a Public Works project, then it shall complete the installation of the GEO system within such period of time as the Parties agree upon in the Agreement.

As part of the Agreement, after the City Council approves the terms and condition of the resolution of the Agreement, Seller shall provide temporary access easement rights to the City to access the GEO Field Area to conduct drilling to analyze the number of wells needed to operate the GEO system. At its sole cost and expense, the City shall (i) obtain any permits or approvals required to perform such drilling, including any permits or approvals from, and/or any soil management plans required by, WDNR and/or any other applicable governmental agency, (ii) manage and dispose of any materials in accordance with approved soil

management plans and law, and (iii) comply with any requirements, conditions or limitations applicable to the Condo Lot, including the repair or replacement of any required cap in accordance with WDNR or DATCP requirements. In addition, during the Due Diligence Period, Seller and the City will negotiate provisions to be part of the Declaration for the subsurface GEO Field Area to be a Limited Common Element of the Library Space and to include provisions to allow for the installation and maintenance of the above-referenced City GEO system and equipment. If the City elects not to construct the GEO system then the Agreement shall contain a means by which the Parties can address an alternative HVAC system acceptable to Seller and City, which agreement shall include the City paying any additional costs incurred by Seller relating thereto.

10. The Seller shall, prior to Closing and at its sole cost and expense, construct the Joint Access Drives as shown in Exhibit A and described in the Easements, the scheduled common elements (meaning the structure of the west side of the Building, the Atrium, and the roof over the west side of the Building and the Atrium), and the Limited Common Elements attributable to the Library Space (with the exception of the improvements above the GEO system which shall be completed after Closing as provided below, including the completion of any portions of Grand Oak Trail delayed due to the installation of the GEO system). Limited Common Elements in the final design shall include accommodation for: a drive up and drop off drive for Library customers ("Book Drive"); loading dock drive ("Loading Dock Drive"); and the covered trash area at the end of the Loading Dock Drive ("Covered Trash Area") as shown in the Exhibit A. The Common Elements and Limited Common Elements for the remainder of the Building shall be completed in accordance with the agreed construction schedule.

11. The Seller shall complete, at its cost, the surface parking lot and the lighting, islands and landscaping above the GEO Field Area, which shall be completed either (A) within 45 days after the completion of the GEO system, if the GEO system is completed with sufficient time to complete the surface parking lot before the asphalt plants close in the fall, or (B) within 45 days after the asphalt plants open in the spring, if the GEO system is not completed with sufficient time to complete the parking lot before the asphalt plants close in the fall.

12. In addition, during the design build of the mechanical, electrical and plumbing systems for the Building, the Seller shall provide City with all drawings/ documents produced during this stage that affect the Library Space for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed, and Seller may prepare such plans prior to the Agreement being signed and require that the City's approval be provided as part of the Agreement. The Seller shall attempt to place any lines, pipes or other systems running through the Library Space tight to columns or exterior walls with minimal interference to the Library Space.

13. The Agreement and the City's purchase of the Library Condo Unit are contingent upon the following during the Due Diligence Period:

a. The City and Seller shall agree upon the allocation of maintenance costs and parking restrictions within the Development as part of the Declaration or Easements; and

b. The City and the Seller agreeing that the City's percentage of the vote as a unit owner of the Royster Corners Condominium Owners Association ("Condo Association") shall, at any given time, be equal to the ratio that the square footage of the Library Space bears to the total square footage of all units in the Building (but a special allocation of voting rights may be made (if agreed upon by the Parties in the Condominium Documents) so as not to result in either residential or commercial units having undue voting power over the other on certain matters); and

c. If the City is pursuing the GEO system, then the provisions in the Declaration relating to the GEO system, which is expected to be structured as a Limited Common Element attributable to the Library Space, will include provisions agreed upon by Seller and the City relating to access, maintenance, repair and, if necessary, replacement the GEO system located within the GEO Field Area. In addition, said provisions shall

address any construction activities occurring above the GEO system in the future and how no structure can be developed above the GEO Field Area or the piping underneath Grand Oak Trail to the Building. This provision shall provide that the City shall repair any damage to the improvements above the GEO system caused by the City's activities or by the GEO system. Likewise, Seller shall repair any damage it or its contractors may cause in the future after the installation thereof if Seller enters into the subsurface GEO Field Area (however, it is acknowledged and agreed that the City shall be solely responsible for burying and compacting its GEO System improvements the within GEO Field Area so that the same shall not be impacted by (nor adversely impact) the construction or use of the planned parking lots, drives and other improvements above the GEO Field Area); and

d. The sale of the Library Condo Unit is subject to the City obtaining an appraisal within the Due Diligence Period indicating a value supporting the price to be paid for the Library Condo Unit; and

e. The sale of the Library Condo Unit is subject to the City obtaining Common Council approval of the Agreement; and

f. Agreeing on the terms of the Solar Electrical Easement.

14. The Agreement and the Seller's sale of the Library Condo Unit are contingent upon the following during the Due Diligence Period:

a. Seller obtaining financing on terms acceptable to Seller to finance the costs associated with the Development; and

b. All City approvals obtained by the Seller for the Development shall continue to be in effect as of date that construction commences (expected to commence within thirty (30) days after the date that the City's contingencies have expired or been waived and the City is unconditionally obligated to purchase the Library Condo Unit pursuant to the Agreement); and

c. The City and Seller agreeing upon the terms and provisions of the Condominium Documents and any easements; and

d. The City waiving all of its contingencies and being unconditionally obligated to purchase the Library Condo Unit once substantially completed in accordance with the Agreement.

15. The closing ("Closing") shall occur within ten (10) business days after (1) completion of the Library Space as certified by the City's Engineer, which certification shall not be unreasonably withheld, conditioned or delayed; and (2) substantial completion of construction of the scheduled Common Elements (meaning the structure of the west side of the Building, the Atrium, and the roof over the west side of the Building and the Atrium), and the Limited Common Elements attributable to the Library Space, as certified by the Seller's architect/engineer. Reasonable extensions to Closing may be granted upon written agreement of the Parties.

An escrow amount of Two Hundred Thousand Dollars (\$200,000) from the Purchase Price will be held with the title company (pursuant to an escrow agreement approved by the Seller, the City and the title company (the "Escrow Agreement")) until the Seller completes the Condominium Common Elements and any Limited Common Elements reasonably necessary for the Library's efficient operation, in material conformance with the Plans and with such completion to be confirmed by the City, which confirmation by the City may not be unreasonably withheld, conditioned or delayed. Five thousand dollars (\$5,000) shall also be held pursuant to the Escrow Agreement for the work to be completed in the Mechanical Room. Collectively, the above-referenced amounts to be held in the Escrow Agreement at Closing total \$205,000.

The Seller agrees to execute and deliver to the City at Closing a Condominium Deed conveying fee simple

ownership of the Library Condo Unit to the City free and clear from all liens and encumbrances, excepting the following: municipal and zoning ordinances and agreements entered under them; recorded easements for the distribution of utility, municipal and association services; general taxes in the year of Closing; the Wisconsin Condominium Act; the Condominium Documents; and any permitted exceptions (matters of title not objected to by the City).

Seller shall record the Condo Declaration and Plat (as agreed upon by the Parties during the Due Diligence Period) before January 1, 2018. The Seller shall pay all 2017 taxes for the Condo Lot that are due and payable in 2018 prior to Closing. At Closing, Seller shall credit the City for Seller's share of the 2018 real estate taxes attributable to the Library Condo Unit. If at Closing, the Library Condo Unit has not been separately assessed, then the proration shall be based on a reasonable allocation of the Condo Lot taxes among the condominium units. After the 2018 assessed value is known for the Library Condo Unit, the Parties will meet and re-prorate the credit given to the City for the Seller's share of the real estate taxes prior to Closing. The Parties will use the last known mill rate for reconciliation purposes.

The Seller shall be responsible for any and all special assessments, area assessments, connection charges, interceptor charges or any other charges payable to any municipality or utility with regard to the Development, Building or Library Condo Unit as of the date of Closing.

16. With respect to the continuing environmental obligations, the Seller agrees to indemnify and save the City harmless, along with each of its officers, agents and employees, from and against any and all losses, damages, costs, charges, expenses (including reasonable attorneys' fees), causes of action, suits, claims, demands, judgments and liabilities arising from or relating to: any and all claims, demands, judgments, damages, actions, causes of action, injuries, administrative orders, consent agreements and orders, penalties, fines, liability, loss, cost, damage and expense of any kind whatsoever (including reasonable attorneys' and witnesses' fees, deposition costs and copying and telephone charges), including claims arising out of loss of life, injury to persons, property or business or damage to natural resources resulting from or due to the failure by Seller to comply with applicable statutes, rules, and the terms and conditions relating to the VPLE Certificate of Completion or any other regulatory approvals in connection with Seller's excavation and construction on the Development, including those relating to the storage, treatment or disposal of materials.

17. In connection with the City's borings, excavation, installation, use, and maintenance of its GEO system (if installed), the City shall (A) prepare and obtain WDNR approval of a soil management plan, and comply with the approved soil management plan, (B) prepare and obtain approval of any required amendments to the Cap Maintenance Plan or other applicable plans, and comply with the approved amendments, (C) prepare, obtain and comply with any other applicable permits and approvals from WDNR or other governmental agencies, (D) ensure that any excavation, storage, treatment or disposal of materials is in compliance with any soil management plan, applicable statutes and rules and the terms of any regulatory approvals. City shall obtain Seller's prior approval of any application for any permit, approval, soil management plan or amendment to any applicable plans, which approval shall not be unreasonably withheld, conditioned or delayed. If contaminated soils cannot be reasonably managed within the GEO Field Area, or if WDNR/DATCP does not allow management within the GEO Field Area, then the City will bear the costs of removal and proper disposal. The City understands that the surface above the GEO Field Area has already been graded to the planned subgrade and that the elevation cannot be increased by the City, and the City will need to remove any excess soils that cannot be managed within the GEO Field Area (as may be permitted by WDNR/DATCP), and the City shall restore the gravel base on the surface to the same depth of base and to the same elevation grade as presently exists.

18. After completion of construction of the Development by Seller, and provided construction by Seller of the caps and the taking by Seller of such other action as was required by the WDNR or DATCP has taken place in accordance with all applicable rules, regulations, plans and approvals in connection with the Development, the Condo Association shall be responsible in the Condominium Documents for the following continuing

obligations:

a. The Condo Association shall comply with the conditions, requirements, and continuing obligations applicable to the Condo Lot contained in the VPLE Certificate of Completion, including the requirements to maintain and inspect the caps constructed by Seller. . Notwithstanding the foregoing, Seller shall remain responsible for and indemnify the City for a breach of warranty or non-compliance with the covenants and conditions of the VPLE Certificate of Completion or any other agreement between Seller, WDNR or DATCP prior to the Condo Association assuming responsibility under the terms of this Section; provided, however, that the City shall be solely responsible for any non-compliance associated with its work relating to the installation and maintenance of the GEO system.

b. If excavation occurs in the future, the Condo Association shall ensure that the party performing the excavation needs to obtain approval of a soil management plan from WDNR and all other applicable permits and approvals, and that such party complies with such permits, approvals, soil management plan and/or other applicable requirements.

c. The Condo Association shall maintain a maintenance plan and inspection log pursuant to WDNR requirements. Inspections shall be conducted in accordance with any cap maintenance plan or other requirements imposed by WDNR.

d. Covenant Not to Sue. As part of the Agreement, Seller, RDC Development, LLC and Ruedebusch Development & Construction, Inc., will, for and on their own behalf only, release, and covenant not to pursue against the City, any cause of action, suit, claim, demand, judgment or liability arising from or relating to contaminants contained in soil imported onto the Royster Corners property from City projects or property prior to the date of this Letter of Intent.

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to execute, deliver the Agreement 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.