



## Legislation Text

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**File #:** 47683, **Version:** 1

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### **Fiscal Note**

No fiscal impact.

### **Title**

Authorizing a license between the City and Homburg Contractors, Inc. to deposit up to nine thousand (9,000) cubic yards of top soil on the "North Plat" in Olbrich Park, as a part of the redevelopment of the Garver Feed Mill.

### **Body**

WHEREAS, as part of the redevelopment of the Garver Feed Mill and surrounding site shown on Attachment 1 ("Property"), Garver Feed Mill, LLC ("Developer") will engage Homburg Contractors, Inc. as its excavator ("Licensee") for the Property; and

WHEREAS, the final grading and restoration of the site will require clean cap material and clean top soil to cap the contaminated soil as part of a remediation plan with the Wisconsin Department of Natural Resources ("WDNR"); and

WHEREAS, prior to commencing the redevelopment on the site, the Developer is proposing to allow Licensee to deposit up to nine thousand (9,000) cubic yards of excess clean top soil on the Premises, defined below, from another project at no cost to the City; and

WHEREAS, having this clean top soil on the site will help reduce future costs associated with the remediation; and

WHEREAS, the City is willing to accept said clean top soil, provided that it does not contain any and all known and unknown environmental contaminants; and

WHEREAS, the City will retain ownership of the clean top soil should the Developer not commence the redevelopment;

NOW, THEREFORE, BE IT RESOLVED, the Common Council authorizes the Mayor and City Clerk to execute a license with Licensee to deposit up to nine thousand cubic yards of clean top soil on the North Plat on substantially the following terms:

1. Premises: See Attachment 2.
2. Term: This License shall be for the shorter of either: a term of one year commencing on the Effective Date, which shall be the date of the last signature by the City, except as otherwise provided herein; or such time as the Developer executes a ground lease for the Property as part of the redevelopment of the Property.
3. Use: The Licensee's use of the Premises shall be limited to storing clean top soil. This License is non-exclusive.
4. Fee: There shall be no cost to the Licensee during the term of the License.
5. Soil Condition: Licensee shall test and provide evidence to the City that the top soil stored in

accordance with the License is free of all environmental conditions and that such top soil is suitable for the necessary remediation required by the WDNR. Licensee shall be liable for any misstatement or material misrepresentation as to the condition of the top soil.

6. Indemnification: The Licensee shall be liable to and 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 Licensee and/or its officers, officials, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this License, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, or employees.

7. Insurance: With respect to the delivery of the top soil, Licensee shall carry commercial general liability insurance covering as insured the Licensee and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 per occurrence. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this License. As evidence of this coverage, the Licensee shall furnish the City with a certificate of insurance on a form approved by the City, and if requested by the City Risk Manager, the Licensee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while this License is in effect, the Licensee shall provide a renewal certificate to the City for approval.

8. Revocation and Termination: This License shall not be revocable or terminate except under the following conditions:

- a. The City does not approve a Development Agreement for the redevelopment of the Property.
- b. The Licensee breaches a term of this agreement.
- c. The Developer takes possession in the Property via ground leases as part of the redevelopment of the property, in which event the top soil shall become the property of Developer.

9. Rights Upon Expiration, Revocation or Termination: Upon the expiration, revocation or termination of this License for any cause, the Licensee's rights in the Premises and its obligations hereunder shall cease, and the Licensee shall immediately surrender the Premises. All soil on the premises shall become the property of the City.

10. Erosion Control: The Developer shall be responsible for securing an erosion control permit and installing and maintaining the necessary erosion control measures for the duration of construction.

BE IT STILL FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to execute any and all documents, in a form and manner approved by the City Attorney, necessary to complete the transactions described in this Resolution.