



Legislation Text

File #: 50892, **Version:** 1

Fiscal Note

The proposed resolution approves an amendment to the Option to Purchase Agreement between the City of Madison and Hoepker Center, LLC for property within The Center for Industry and Commerce (CIC). The proposed amendment removes a portion of Lot 2 ("Sale Property") so that Motion W Industrial, LLC can purchase that portion. Hoepker Center, LLC is willing to amend the Option to Purchase. The total purchase price of the remaining Lot 2 property by Hoepker Center, LLC is \$586,418.95. After closing costs, the estimated net proceeds from the sale is \$560,924. Proceeds from the sale will be distributed to the General Land Acquisition Fund and applied towards paying off special assessments on City-owned properties located elsewhere within the CIC. A companion resolution (File 50893) will be introduced to the Common Council to approve the acquisition of the Sale Property by Motion.

Title

Approving an Amendment to the Option to Purchase Agreement between the City and Hoepker Center, LLC.

Body

WHEREAS, on December 16, 2016 a Purchase and Sale Agreement ("PSA") was executed between the City of Madison and Hoepker Center, LLC, an affiliate of St. John Properties Acquisitions, LLC ("Hoepker"), in part 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 discontinued and vacated on the eastern side of said lots ("Option to Purchase"), located within The Center for Industry & Commerce. This PSA was approved on September 20, 2016 by the Common Council via Resolution Enactment No. RES-16-00714, File No. 44296; and on December 6, 2016 for amendment thereto via File No. 45292; and

WHEREAS, a certified survey map ("CSM") defined the property for the Option to Purchase as Lot 2 ("Property") and was recorded with the Dane County Register of Deeds as certified survey map no. 14573, document no. 5346632, volume 100 pages 312-320; and

WHEREAS, Hoepker and City executed the Option to Purchase of Lot 2 on August 4, 2017, and the First Amendment to the Option to Purchase on December 7, 2017; and

WHEREAS, Motion W Industrial, LLC ("Motion") has requested to purchase a portion of Lot 2 that is currently under the Option to Purchase; and

WHEREAS, Hoepker is willing to amend the Option to Purchase at no cost to Hoepker to remove the portion of Lot 2 totaling 22, 630 s.f. ("Sale Property") so that Motion can purchase it; and

WHEREAS, a companion resolution is being introduced today to the Common Council to approve the acquisition of the Sale Property by Motion.

NOW, THEREFORE, BE IT RESOLVED that the Option to Purchase is hereby amended as follows, and described in the Second Amendment to the Option to Purchase Agreement:

1. Exhibit A is hereby deleted and replaced with the new Legal Description of Property that will be attached to the Second Amendment to the Option to Purchase.
2. Paragraph 14. b "Purchase Price" is hereby deleted and replaced with:

The Purchase Price for the Property shall be Two and 15/100 Dollars (\$2.15) per square foot of land area of the Property, which equates to \$586,418.95 Five Hundred Eighty Six Thousand Four Hundred Eighteen and 95/dollars ("Option Purchase Price").

3. Paragraph 14.c "Special Assessments" is hereby deleted and replaced with:

The parties agree and acknowledge that all Special Assessments at the time of the recording of CSM Number 14573 were paid by the City in the amount of Sixty Five Thousand Three Hundred and Twenty Seven Dollars and 59/cents \$65,327.59 ("CSM SA"). Motion will pay City a portion of the CSM SA at its closing equal to \$5004.90 ("Motion SA"). The result of the CSM SA less the Motion SA equals the outstanding special assessments or \$60,322.69 ("Outstanding Special Assessments"). If Buyer exercises its rights under this Option and closes on the Property during the Option Period, then Buyer shall reimburse the City for some portion of the Outstanding Special Assessment based on the following:

First Year of Option Period: If Buyer closes on the Property one (1) year or less after the Effective Date, Buyer will not reimburse the City for any portion of the Outstanding Special Assessments (i.e. Buyer's share is \$0.00);

Second Year of Option Period: If Buyer closes on the Property more than one (1) year but less than two (2) years after the Effective Date, Buyer shall reimburse the City at Closing an amount equal to 10% multiplied by the Outstanding Special Assessments (i.e. Buyer's share is \$6032.27);

Third Year of Option Period: If Buyer closes on the Property two (2) years or more after the Effective Date, Buyer shall reimburse the City at Closing an amount equal to 20% multiplied by the Outstanding Special Assessments (i.e. Buyer's share is \$12,064.54).

In addition to the above-referenced amounts pertaining to the Outstanding Special Assessments depending on the Closing date, if Buyer closes on the purchase of the Property, Buyer shall pay any special assessments levied against the Property after August 29, 2016 (including any interest that may accrue thereon) when such special assessments become due in the ordinary course (which may include annual installments in accordance with the standard procedures of the City of Madison's Assessor's Office).

If Buyer elects not to purchase the Property, then Buyer shall have no responsibility to pay any special assessments relating to the Property.

4. Exhibit B is hereby deleted and replaced with the new certified survey map to be recorded by Motion at its cost depicting the division of Lot 2.

5. A new Paragraph 24 will be added with the following terms:

City has provided Buyer at Motion's sole cost the following: (i) the Sale Property metes and bounds description and area; (ii) a metes and bounds description and area of the remaining land subject to this option consisting of Lot 2 (Lot 2 of CSM 14573) less the Sale Property ("Modified Option Property"); and (iii) a two lot certified survey map attached hereto as Exhibit B ("New CSM") depicting the assemblage of the Sale Property and Lots 21-23 and Lots 32-34 of The CIC subdivision as Lot 1 and the Modified Option Property as Lot 2. After the approval of the New CSM by the City, CJ Engineering will set the property corners of the New CSM, including the Modified Option Property.

6. Except as expressly amended herein, all other terms of the Option to Purchase remain the same.

BE IT FURTHER RESOLVED that all other terms and conditions of the Option to Purchase shall remain the same; and,

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.