



Legislation Text

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Fiscal Note

The proposed resolution authorizes the City's acquisition of property for the Cedar Street public right-of-way. The estimated acquisition cost for this parcel is \$280,000 for the land plus \$10,000 in additional real estate costs for environmental site assessment, title work, and miscellaneous closing costs for a total amount of \$290,000. Funding for the acquisition is included in Engineering's 2020 Capital Budget in the Cedar Street construction project. No additional City appropriation is required.

Title

Authorizing the City's execution of a Purchase and Sale Agreement between the City of Madison and Wingra Building Group and/or their assigns and partners for the City's acquisition of a portion of the property located at 1313 South Street for the proposed Cedar Street public right-of-way. (13th AD)

Body

WHEREAS, Wingra Building Group, a Wisconsin general partnership, managed by Dean Health Systems, Inc., operated by SSM Health (collectively, the "Seller") is the owner of the property located at 1313 South Street, City of Madison, Dane County, Wisconsin ("SSM Property"), which is proposed for redevelopment; and

WHEREAS, the City of Madison ("City") Plan Commission conditionally approved the Seller's redevelopment plans for the SSM Property at its February 24, 2020 meeting subject to the condition that the Seller produce and record a City approved Certified Survey Map ("CSM") with the Dane County Register of Deeds that creates a legal lot to be conveyed to the City; and

WHEREAS, the City's Common Council conditionally approved the CSM at its March 3, 2020 meeting with the condition that Outlot 2 of the CSM is subject to a restriction that it is reserved for future purchase by the City for public right-of-way purposes; and

WHEREAS, the Seller executed and agreed to a Purchase and Sale Agreement ("Agreement") that conveys Outlot 2 of the CSM to the City for a purchase price of \$280,000, as determined by an appraisal approved by the City's Office of Real Estate Services.

NOW, THEREFORE, BE IT RESOLVED that the City's Common Council hereby authorizes the City's execution, as Buyer, of the Agreement with the Seller for the purchase of Outlot 2 of the CSM, subject to agreement by the Buyer and Seller (together, the "Parties") of the following terms and conditions:

1. The Property. The Buyer shall purchase and the Seller shall sell and convey by Special Warranty Deed (the "Deed") fee simple title to a portion of the real property located at 1313 South Street together with all improvements located thereon (collectively, the "Property") depicted on attached Exhibit A and legally described as follows:

Outlot Two (2) Certified Survey Map No. _____, located in the City of Madison, Dane County, Wisconsin.

2. Effective Date. The "Effective Date" shall be the date the City's execution of the Agreement.
3. Purchase Price. The total purchase price of the Seller's interest in the Property (the "Purchase Price") shall be Two Hundred Eighty Thousand Dollars and 00/100 (\$280,000.00). The Purchase Price shall be

payable in cash at Closing, as defined herein, subject to the adjustments and prorations herein provided.

4. Personal Property. The transaction contemplated by this Agreement does not include any personal property.
5. Delivery of Documents. Within fifteen (15) days of the Effective Date, the Seller will reproduce at the Seller's expense and send to the Buyer all environmental studies, reports, surveys, permits, applications, building inspections, and remediation plans or assessments of the Property and all studies, reports, plans or assessments related to the condition of the Property in the Seller's possession or control.
6. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided in the Agreement, the 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 the Seller, its agents or employees, in entering into the Agreement or in closing the transaction described herein. Except as provided in Section 9 below, the Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property.
7. Due Diligence Period. The Buyer shall have one hundred twenty (120) days from the Effective Date (the "Due Diligence Period") to review, test and inspect all aspects of the Property, at its sole cost and expense. Additionally, the Buyer shall secure approval of a Certified Survey Map (the "CSM") creating the aforementioned Outlot 2, the Property to be conveyed by the Seller, which shall be recorded with the Dane County Register of Deeds at or prior to Closing.

If within the Due Diligence Period the Buyer determines, in its sole discretion, that it does not desire to purchase the Property, the Buyer may provide written notice to the Seller of such desire and the Agreement shall terminate immediately.

If the Buyer does not provide written notice terminating the Agreement on or prior to the one hundred twentieth (120th) day of the Due Diligence Period, the Agreement shall remain in full force and effect, the Buyer shall accept the Property as-is, and the Parties shall proceed to close the transaction as provided herein.

Should the Buyer desire to close prior to the end of the Due Diligence Period, the Buyer may provide the Seller with written notice of its intent to do so. The provision of such notice by the Buyer shall not affect the terms contemplated in the Agreement, except that the Closing shall occur on or before fifteen (15) days from the date the Seller receives such notice, unless the Parties agree in writing to another date.

The Due Diligence Period may be extended upon written agreement of the Parties.

8. Access to the Property. The Buyer and the Buyer's authorized agents, contractors, and engineers shall be permitted access to the Property for the purpose of conducting inspections and testing, including but not limited to, a Phase 1 environmental site assessment of the Property at reasonable times with advance notice to the Seller, it being understood and agreed that such inspections and testing must be done at times and in a manner that does not result in daytime disruption to Seller's clinic or parking lot. Further, Buyer shall not be entitled to undertake a Phase 2 environmental site assessment or undertake any invasive testing for environmental purposes at the Property unless: (i) the Phase 1 environmental site assessment for the Property discloses a recognized environmental condition for which a Phase 2 environmental site assessment is reasonably recommended by the environmental consultant, and (ii) the Seller provides its written consent for the Buyer to perform such Phase 2 environmental site assessment, which consent may not be unreasonably withheld. The Buyer shall repair, at the Buyer's sole cost and expense, all damages caused by any of its assessments and

inspections so that the condition of the Property is returned to as good or better condition as existed prior to the assessment(s) and inspections.

9. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing, a commitment from First American Title Insurance Company (the "Title Company") to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents, together with a gap endorsement. 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 the 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 the Buyer. The Buyer shall notify the Seller of any valid objection to title, in writing, prior to Closing. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to carry out the Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, the Agreement shall be void.
10. Survey. ALTA/ACSM. Any survey of the Property including, but not limited to, an ALTA/ACSM Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/ACSM 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 the Buyer and the Title Company providing the title insurance described in Paragraph 9 shall be at the sole cost and expense of the Buyer.
11. Commissions. The Seller represents that it has not entered into any contracts with any brokers or finders nor has the Seller obligated itself to pay any real estate commissions or finders' fees on account of the execution of the Agreement or the close of the transaction contemplated therein. The Buyer represents that it has not entered into any contracts with any brokers or finders nor has the Buyer obligated itself to pay any real estate commissions or finders' fees on account of the execution of the Agreement or the close of the transaction contemplated therein. The provisions of this Paragraph 11 shall survive any expiration or termination of the Agreement and shall not merge into any deed delivered and accepted upon the closing of the transaction therein contemplated.
12. Closing.
 - a. Closing shall occur on or before fifteen (15) days from (a) the expiration of the Due Diligence Period; or (b) the date of the Seller's receipt of notice from the Buyer requesting an earlier date of Closing; or (c) such other date agreed to in writing by the Parties, at the office of the Title Company issuing the commitment for title insurance, unless the Parties agree in writing to an alternate Closing location. If a condition of approval for the CSM delays the approval of the CSM past the period set forth in Paragraph 12 herein, the Parties may agree in writing upon a date of Closing that is mutually agreeable to both Parties.
 - b. The Seller agrees to execute and deliver to the Buyer at closing the Deed conveying the Property to the Buyer 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 services; easements; recorded building and use restrictions and covenants. The Deed shall provide that the Property shall only be used for public right of way purposes.
 - c. The Buyer shall pay all recording/filing fees except that the Seller 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. Real estate taxes applicable to the Property in the year of Closing shall be prorated between the Buyer and the Seller as of the date of Closing based upon the latest known assessment and latest

known mill rate.

- e. The Seller shall be responsible for the payment of any existing special or area assessments, sewer interceptor charges, or any other charges payable to any municipality or utility with regard to the Property as of the date of Closing.
- f. The Seller shall pay any fees related to the Wisconsin Real Estate Transfer fee.
- g. The Buyer shall prepare and deliver at Closing the Wisconsin Transfer Return due in connection with conveyance of the Property.
- h. All costs charged by the Title Company to facilitate Closing shall be prorated between the Parties.

13. Representations. The Seller represents the following:

- a) No Prior Right to Purchase. No party has any option, right of first refusal or similar right to purchase all or any portion of the Property.
- b) No Adverse Possessors. There are no parties in possession of any portion of the Property as tenants at sufferance or trespassers.
- c) No Lessees. The Seller will represent that the Property is not currently leased and the Seller will agree that it shall not enter into any lease or rental agreement for the Property, or any portion thereof, during the Buyer's Due Diligence Period, as described in Paragraph 7, and through the date of Closing, without the prior written consent of the Buyer.

14. Miscellaneous.

- a) No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties.
- b) Benefit and Burden. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, personal representatives, successors, and assigns. The provisions herein contained shall survive closing and delivery of the Deed and shall not be merged therein.
- c) Entire Agreement. This Agreement contains the entire agreement between the Parties and any modification, alteration or addendum to this Agreement shall be valid only when written and executed by both Parties.
- d) Counterparts and Transmittal of Signatures. This Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same Agreement. A signed copy of the Agreement transmitted by facsimile or email shall be treated as an original and shall be binding against the party whose signature appears on such copy.
- e) Severability. If any non-material part, paragraph, or article of this Agreement shall be determined to be invalid, or otherwise unenforceable, the validity of all the remaining parts, paragraphs, and articles shall not be affected thereby. Any such non-material parts, paragraphs, or articles shall be deemed severable.
- f) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws

of or applicable to the State of Wisconsin.

- g) Headings. The headings in this Agreement are meant for reference purpose only and shall not in any way affect the meaning or interpretation herein.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to sign, accept, and record any and all documents and legal instruments required to complete the transactions contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney.