



## Legislation Text

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**File #:** 69956, **Version:** 1

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### **Fiscal Note**

No additional City appropriation is required for the proposed property sale. The purchase price for approximately 272,753 square feet, or 6.26 acres, of City-owned land shall be \$859,172. Any net proceeds following the sale and associated closing costs will be deposited into the City's General Land Acquisition Fund. The General Land Acquisition Fund's current cash balance is approximately \$2.1 million, \$1.37 million of which is unassigned fund balance. Proceeds from the proposed sale will increase this cash balance to \$2.96 million, assuming the GLA fund has not made a cash purchase of any property.

### **Title**

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and O'Neill Properties, LLC or its assigns, for the Purchase of Property located in the Center for Industry & Commerce Business Park (17<sup>th</sup> AD)

### **Body**

WHEREAS, O'Neill Properties, LLC ("O'Neill") is seeking to purchase approximately 272,753 square feet, 6.26 Acres of City owned land encompassing Lot 2 CSM No. 14832 in the Center for Industry & Commerce Business Park (the "Property") for constructing an approximately 90,000 square foot build-to-suit office, flex, manufacturing and warehouse facility; and

WHEREAS, the terms of the purchase and sale agreement will include a guarantee for commencement of construction with a repurchase option for non-compliance.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Madison hereby authorizes the Mayor and Clerk to execute a Purchase and Sale Agreement ("Agreement") between the City ("Seller") and O'Neill Properties, LLC and/or its assigns ("Buyer"), for the purchase of the Property on substantially, though not exclusively, on the following terms and conditions:

1. **Property.** The Property shall consist of Center for Industry & Commerce Business Park, City of Madison, Lot 2 - Certified Survey Map (CSM) # 14832, totaling approximately 272,753 square feet or 6.26 Acres.
2. **Conveyance.** Buyer shall purchase, and Seller shall sell and convey by Special Warranty Deed (the "Deed"), fee simple ownership of the Property, including all improvements located thereon and all appurtenances thereto free and clear from all liens and encumbrances excepting the following: municipal and zoning ordinances and the "Permitted Exceptions" (defined below).
3. **Project.** Buyer intends to develop an approximately 90,000 square foot office, flex, manufacturing and warehouse space (the "Project") on the Property as a build-to-suit project for the O'Neill Properties, LLC.

4. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by Seller or Buyer, as indicated on the signature page.
5. Purchase Price. The purchase price for Seller's interest in the Property (the "Purchase Price") shall be Eight Hundred Fifty-Nine Thousand One Hundred Seventy-Two Dollars (\$859,172.00).
6. Earnest Money. Within five (5) business days of the Effective Date, Buyer shall deposit into escrow with First American Title NCS, Madison Ten Thousand Dollars (\$10,000) as "Earnest Money," which will be non-refundable except as otherwise provided in Paragraphs 9, 10 and 14, below, and the corresponding provisions of the Agreement, to be applied toward the Purchase Price at Closing.
7. Limited Representations and Warranties; AS-IS Condition. The Agreement shall provide warranties of title, authority, and a warranty that Seller has no notice or knowledge of environmental contamination. In all other respects, 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 Seller, or any other persons for Seller, in entering into the Agreement or in closing the transaction described herein.
8. Delivery of Documents. Within ten (10) days of the Effective Date and throughout Buyer's Contingency Period as described in Paragraph 9, Seller will reproduce at Seller's expense and send to Buyer at Buyer's office copies of all environmental studies, reports, permits, applications and remediation plans or assessments of the Property and correspondence between Seller and any regulatory authority, and all studies, reports, plans or assessments related to the condition of the Property in Seller's possession or control.
9. Buyer Contingencies. Buyer shall have one hundred eighty (180) days from the Effective Date (the "Buyer's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate the Agreement if any of Buyer's contingencies are unacceptable, in Buyer's sole discretion. If Buyer timely terminates the Agreement as a result of any of Buyer's contingencies, the Earnest Money shall be promptly refunded to Buyer and the Agreement shall be null and void.
  - a. Land Use Approvals. Buyer securing all land use approvals for the development of the Project. Such approvals may include, but not be limited to: approval by all zoning, building, engineering, traffic and similar approvals and permits necessary or required to complete the Project.
  - b. Project Financing. Buyer securing financing acceptable to Buyer for the construction of the Project.
  - c. Inspections and Testing. Buyer obtaining various inspections and testing of the Property. Buyer, at its sole expense, may obtain an inspection of the Property and all related improvements located on the Property, a Phase 1 or 2 environmental site assessment of the Property and related testing, soils testing and any other inspections or testing deemed necessary by Buyer. In no event shall Seller be required to cure any matter to which Buyer objects relating to the condition of the Property or any improvements located thereon, but Buyer retains the right to renegotiate the Purchase Price in the event that development conditions are not reasonable for the Project.
  - d. Survey and Title. Buyer reviewing and agreeing to accept the condition of title to the Property as revealed by the title commitment to be delivered to Buyer.

10. Survey. If needed, Buyer shall provide to Seller, at Buyer's expense, within sixty (60) days of the Effective Date, an ALTA Land Title Survey of the Property that meets the Minimum Standard Detail Requirements for ALTA Land Title Surveys effective November 1, 2016 (the "Survey") in order to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of Buyer and Title Company providing the title insurance described in Paragraph 14. The Survey shall show the location of all exceptions shown by the title commitment that are capable of being shown on a survey.
  
11. Access to Property. Buyer and Buyer's authorized agents, engineers, consultants and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing anticipated by Buyer's contingency contemplated in Paragraph 9.d. including, but not limited to, a Phase 1 or 2 environmental assessment of the Property at reasonable times with at least twenty-four (24) hour notice to Seller. Buyer will repair all damages caused by its inspections, at Buyer's cost, so that the condition of the Property is returned to as good or better condition as existed prior to the inspection.
  
12. Closing. Closing shall occur within thirty (30) days after completion of Due Diligence, unless another date is agree to by the parties, or if required, for a commercially reasonable period of time, due to delays on the part of the City in providing necessary approvals. Costs shall be apportioned in a manner consistent with the market.
  
13. Exclusivity: Seller agrees to withdraw the Property from the market until execution of the Purchase Agreement or negotiations are otherwise terminated, during which time, Seller agrees not to offer the Property of any interest therein, for sale to any other party and the cease all negotiations for the sale of the Property.
  
14. Construction Contingency: Buyer shall agree to commence construction onsite, as defined as pouring footing and foundations, within eighteen (18) months from the date of Closing (the "Construction Deadline"). In the event Buyer fails to meet the Construction Deadline, Seller shall have the right, but not the obligation to purchase the Property back at 100% of the Purchase Price plus any reasonable out of pocket costs and expenses incurred by Purchaser with respect to the site planning and Due Diligence, but less any of following costs incurred by seller: closing fees, brokerage fee to Cresa Madison, title and transfer costs.

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to execute the Purchase and Sale Agreement, deliver and record the deed, and such other necessary documents, and 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.