



## Legislation Text

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**File #:** 76485, **Version:** 1

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### Fiscal Note

The proposed resolution authorizes the purchase of property on South Park Street at a cost of \$3,765,000. A portion of the purchase, \$2,400,000, will be funded from the Parks Division's 2023 Adopted Capital Budget from the Land Acquisition program. Funding of \$2,286,000 from Economic Development's 2023 TID 51 capital budget will be used to cover the remaining purchase costs as well as demolition and remediation costs. Additionally, the proposed resolution amends Economic Development's 2023 capital budget to utilize \$2,400,000 in proceeds from TID 39 to assist the seller of the property with relocation.

### Title

Amending the 2023 Economic Development Division TID 39 Capital Budget by \$2,400,000, authorizing the use of \$2,286,000 of existing 2023 Economic Development Division TID 51 Capital Budget, and authorizing the execution of a Purchase and Sale Agreement (the "PSA") for the purchase of 1800, 1802 and 1804 South Park Street, Madison, WI (the "Properties") from All Metals Real Estate LLC and BAVVLE LLC (the "Seller").

### Body

WHEREAS the City wishes to continue to implement the South Madison Plan, adopted on January 4, 2022, (RES-22-00026, Legistar ID 68084), and

WHEREAS, the City is committed expanding park spaces to those areas of the City that have been underserved and providing opportunities for affordable housing, and

WHEREAS, the acquisition of the properties at 1800 South Park St, 1802 South Park St, and 1804 South Park St (collectively, the "Property"), will further implement the South Madison Plan by allowing an expansion of Heifitz Park, relocating an existing recycling business, and creating future opportunities for additional housing in South Madison,

WHEREAS, the Parks Division's 2023 Adopted Capital Budget authorizes \$2,400,000 in Land Acquisition Program #17128 [Munis #14620-51-110] to assist with the acquisition of the Property

NOW THEREFORE BE IT RESOLVED, that the Common Council authorizes an expenditure of up to \$2,286,000 from the already approved 2023 Economic Development Division TID 51 Capital Budget to be used for acquisition, demolition, and remediation of the Property; and,

BE IT FURTHER RESOLVED, that the Common Council amends the Economic Development Division TID 39 Capital Budget by \$2,400,000 to be used to assist with the relocation of All Metals Recycling to 5651 Tradesmen Drive; and,

BE IT FURTHER RESOLVED that the City's Common Council hereby authorizes the City's execution, as Buyer, of the Purchase and Sale Agreement (the "Agreement") with All Metals Real Estate LLC and BAVVLE LLC (the "Seller") for the purchase of the Property, subject to the following terms and conditions:

1. The Property. The Buyer shall purchase and the Seller shall sell and convey by Warranty Deed (the "Deed") its respective fee simple title to the real property located at 1800 South Park Street, 1802 South

Park Street and 1804 South Park Street, together with all improvements located thereon (collectively, the "Property") legally described as follows:

1800 South Park Street: T7N R9E, SEC 26, PRT SW 1/4 DESC AS FOL: COMM AT THE INTERSECTION OF C&NW RR & S LN SD SEC 26, TH SE AT RIGHT ANGLES FROM C/L SD TRACK 50 FT, TH NELY PARA SD TRACK 500 FT TO POB, TH CONT N 51 DEG 05 MIN E 360 FT, TH N 01 DEG 49 MIN 21 SEC E 50.03 FT, TH S 51 DEG 05 MIN W 390 FT, TH S 34 DEG 55 MIN E 38 FT TO POB.

1802 South Park Street: SEC 35-7-9 PRT NE1/4NW1/4 & SEC 26-7-9 PRT SE1/4SW1/4 COM SEC 35 N1/4 COR TH S 279 FT TH N89DEGW 608.71 FT TO POB TH N46DEGW 37.8 FT TH N38DEGW 212.9 FT TH N51DEGE 16.6 FT TH N38DEGW 51.5 FT TO PT 50 FT SE FR RR MAIN TRACK CL TH PARA TO SD CL N51DEGE TO E LN SEC 26 SE1/4SW1/4 TH N ALG SD E LN TO PT 12 FT SE OF SD TRACK CL TH S51DEGW PARA TO SD CL TO PT N38DEGW 38 FT FR PT ON RR SE R/W LN LOC 589 FT SW FR SEC 35 N LN TH S39DEGE 38 FT TH N51DEGE TO N LN NORTH AVE & NW COR OAKRIDGE SUBD 2ND ADDN TH S89DEGE 474.69 FT TO POB ALSO ESMT OVER 20 FT PCL LYG E OF LN RNG FR POB ABV-DESCR LANDS N46DEGW 37.8 FT & N38DEGW 212.9 FT TO POE SD LN EXC PRT WITHIN CITY OF MADISON LIMITS

1804 South Park St: CERTIFIED SURVEY MAP NO 6568 AS RECORDED IN DANE COUNTY REGISTER OF DEEDS IN VOL 32 PAGE 145 OF CERTIFIED SURVEYS, LOT 1.

2. **Effective Date.** The "Effective Date" shall be the date first stated above.
3. **Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be Three Million Seven Hundred Sixty Five Thousand and 00/100 Dollars (\$3,765,000). The Purchase Price shall be payable in cash at Closing, as defined herein, subject to the adjustments and prorations herein provided.
4. **Earnest Money.** Within ten (10) business days of the Effective Date, the Buyer shall deposit with the Title Company, as defined below, Twenty-Five Thousand Dollars (\$25,000) as "Earnest Money," which will be non-refundable except that the Earnest Money shall be forfeited and returned to the Buyer as provided in Paragraphs 9, 11, or 12, or if Seller defaults on the terms of this Agreement. The Earnest Money shall be applied toward the Purchase Price at Closing in accordance with Paragraph 3.
5. **Relocation Payment.** The Buyer shall pay to the Seller Two Million Four Hundred Thousand Dollars (\$2,400,000) as financial assistance (the "New Property Assistance") for closing on a new property located at 5651 Tradesmen Drive (the "New Property"). In addition to the New Property Assistance, Buyer shall also provide One Hundred Eighty-One Thousand Dollars (\$181,000) in consideration for Seller moving its business operations to the New Property within fifteen (15) days of Seller closing upon the purchase of the New Property.
6. **Personal Property.** The transaction contemplated by this Agreement does not include any personal property.
7. **Delivery of Documents.** Within fifteen (15) days of the Effective Date, and throughout the Due Diligence Period described below, the Seller will reproduce at the Seller's expense and send to the Buyer all leases, environmental studies, reports, surveys, permits, applications, building inspections, and remediation plans or assessments of the Property in Seller's possession or control, and all studies, reports, plans or assessments related to the condition of the Property in the Seller's possession or control.
8. **Limited Representations and Warranties; AS-IS Condition.** Except as otherwise explicitly provided in this 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 this Agreement or in closing the transaction described herein. 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.

9. Due Diligence Period. In addition to the provisions of Paragraph 10, the Buyer shall have one hundred eighty (180) 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.

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 this Agreement shall terminate immediately and the Earnest Money shall be promptly refunded by the Title Company to the Buyer.

If the Buyer does not provide written notice terminating this Agreement on or prior to the one hundred eightieth (180th) day of the Due Diligence Period, which date is \_\_\_\_\_, 2023, then this 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 this Agreement, except that the Closing shall occur on or before sixty (60) 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.

10. 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 minimizes disruption to Seller's business operations. The Buyer and the Buyer's authorized agents, contractors, and engineers shall be permitted access to the Property for the purpose of conducting a Phase 2 environmental investigation as shall be agreed upon by the Parties at reasonable times with advance notice to the Seller, it being understood and agreed that such investigation must be done at times and in a manner that minimizes disruption to Seller's business operations. The Buyer shall repair, at the Buyer's sole cost and expense, all damages caused by any of its assessments, inspections and investigations so that the condition of the Property is returned to as good or better condition as existed prior to the assessment(s), inspections and investigations.

11. Environmental Remediation and Site Condition. During the Due Diligence Period, the Parties will undertake certain obligations as detailed in this paragraph regarding the condition of the Property:
- a. The Parties have agreed to a set cost for remediation of the Property of \$100,000 (the "Remediation Cost"). The Remediation Cost shall be deducted from the Purchase Price.
  - b. Seller shall undertake to raze structures on the Property (the "Demolition"), at its own expense, prior to Closing, which cost shall be added to the Purchase Price at Closing (the "Demolition Cost"). The Demolition is subject to the Seller receiving appropriate approvals and permits required by any governmental entity required for demolishing a building with known hazardous materials, including but not limited to asbestos. The scope of the Demolition shall be approved by the Buyer, and the Demolition Cost shall be provided on a guaranteed maximum price basis not to exceed \$840,000. Demolition shall occur within six (6) months of the Seller receiving a certificate of occupancy for its New Property. All approvals by the City of Madison related to this obligation shall be made in good faith, but the City of Madison shall have no obligation to make any approvals, or be responsible for any obligations of the Seller in seeking approvals, including filing

applications, or making public testimony supporting the Demolition.

- c. If, within the Due Diligence Period, Seller is unable to receive approvals and permits, or is otherwise unable or unwilling to perform under subparagraph (b) above, then Buyer, in its sole discretion, may (i) provide written notice to the Seller that the Buyer does not wish to proceed with the purchase of the Property and this Agreement shall terminate immediately and the Earnest Money shall be promptly refunded by the Title Company to the Buyer, or (ii) make a reasonable reduction of the purchase price based upon the cost of the City performing the Demolition and proceed to Closing.
          - d. Obligation to cease operation - In consideration of the Relocation Payment, Seller shall execute a land use restriction agreement (the "LURA") with the Buyer requiring the cessation of Seller's business at the Property, and discontinuance of the use of the Property as a scrapyard as defined in the City of Madison General Ordinance Chapter 28.
12. 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 this 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 this Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, this Agreement shall be void and the Earnest Money shall be promptly refunded by the Title Company to the Buyer.
13. Survey. ALTA/NSPS. Any survey of the Property including, but not limited to, an ALTA/NSPA Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys effective February 23, 2021 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 12 shall be at the sole cost and expense of the Buyer.
14. 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 this 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 this Agreement or the close of the transaction contemplated therein. The provisions of this Paragraph 14 shall survive any expiration or termination of this Agreement and shall not merge into the Deed.
15. Closing.
  - a. The closing of the transaction contemplated by this Agreement (the "Closing") shall occur on or before (a) fifteen (15) days from the expiration of the Due Diligence Period; or (b) sixty (60) days from 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, unless the Parties agree in writing to an alternate Closing location.
  - 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 and municipal services; easements; recorded building and use restrictions and covenants; and general taxes for the year of Closing.

- 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 this 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 special or area assessments, sewer interceptor charges, or any other charges payable to any municipality or utility with regard to the Property for work actually commenced as of the date of Closing. The Buyer shall be responsible for the payment of all other special or area assessments with regard to the Property.
  - f. The Seller shall pay the Wisconsin Real Estate Transfer fee due in connection with conveyance of the Property.
  - g. The Seller or Title Company 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 shared equally between the Parties.
  - i. Prior to Closing, the Buyer shall obtain budget authorization from the Common Council of the City of Madison for the purchase of the Property.
  - j. Prior to Closing, the Buyer shall obtain budget authorization from the Common Council of the City of Madison for relocation expenses in the amount of Two Million Four Hundred Thousand Dollars (\$2,400,000) to be paid to Seller .
  - k. Prior to Closing, the Buyer shall cause the City of Madison Common Council to approve resolution language declaring the Property as blighted, and that the acquisition contemplated herein is for blight elimination purposes.
  - l. Seller shall have executed the LURA described in Paragraph 10(d).
16. 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 Third Party Possessors. There are no parties with a possessory interest in any portion of the Property as tenants at sufferance or trespassers.
  - c. Lessees. The Property is currently leased and the Seller shall not enter into any new lease or rental agreement for the Property, or any portion thereof, during the Due Diligence Period, and through the date of Closing, without the prior written consent of the Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Seller shall furnish Buyer will copies of all leases within fifteen (15) days of the Effective Date, as outlined in Paragraph 7.

BE IT FURTHER RESOLVED, that the Property is hereby declared blighted by the Common Council, and the

acquisition of the Property is for blight elimination purposes; and,

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to sign, accept, and record any and all documents and legal instruments and take such other other actions as shall be necessary or desirable to complete the transactions contemplated in this resolution, in a form approved by the City Attorney.