



## Legislation Text

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**File #: 090879, Version: 1**

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090879

SUBSTITUTE 1

040353, 051347

ALD. WITKOWSKI

Substitute resolution approving a Second Restated Agreement for Purchase and Sale of the surplus City-owned property at 4701-5001 South Pennsylvania Avenue in the City of Cudahy between the City of Milwaukee and Cobalt Partners, LLC.

This substitute resolution authorizes entry into a Second Amended and Restated Agreement for Purchase and Sale whereby the City will convey a former landfill at 4701-5001 South Pennsylvania Avenue in the City of Cudahy pursuant to Section 304-49-7, Milwaukee Code of Ordinances.

Whereas, The City of Milwaukee ("City") owns property at 4701-5001 South Pennsylvania Avenue in the City of Cudahy (the "Property") that was acquired in 1954 through consolidation of the Town of Lake and that was operated as a licensed solid waste landfill by the City's Department of Public Works ("DPW"); and

Whereas, DPW no longer uses the Property for those purposes and the City obtained conditional closure of the landfill from the Wisconsin Department of Natural Resources; and

Whereas, By adoption of File No. 040353 on July 27, 2004, the Common Council declared the Property surplus to municipal needs and approved its sale to Kendall Bruenig; and

Whereas, Mr. Bruenig's offer expired without closing and the City's Department of City Development ("DCD") issued a Request for Proposals for sale of the Property on an "as is" basis with no warranties; and

Whereas, Three proposals were received prior to the established deadline and by adoption of File No. 051347 on February 28, 2006, the Common Council approved sale of the Property to Cobalt Partners, LLC ("Cobalt") for \$1,800,000; and

Whereas, Per Common Council File No. 051347, the City and Cobalt entered into an "Agreement for Purchase and Sale" (the "PASA"), effective March 15, 2006, allowing Cobalt a 150-day-buyer-contingency period and calling for a closing within 160 days from March 15, 2006; and

Whereas, For an extension fee of \$2,500, which Cobalt paid to City, the City and Cobalt entered into a First Amendment to the PASA to extend the buyer-contingency period to March 15, 2007 and to extend the closing date to March 26, 2007; and

Whereas, Cobalt and the City entered into a Second Amendment to the PASA on November 22, 2006, to extend the buyer-contingency period to September 15, 2007, and to extend the closing date to September 26, 2007, with Cobalt agreeing to pay the City, beginning December 1, 2006, and on the first day of each month thereafter through September 1, 2007, \$1,000 per month for monthly extension fees; and

Whereas, Effective August 30, 2007, the City and Cobalt entered into an "Amended and Restated Agreement for Purchase and Sale" (the "First Restated PASA"), superseding the original PASA as amended, recognizing that the Property was probably smaller than the City originally thought (20 acres as opposed to 23.7 acres), keeping the purchase price

at \$1,800,000, allowing Cobalt until December 5, 2008 to satisfy or waive contingencies (general feasibility, TID financing from Cudahy and DNR approval of a Remedial Action Plan), and calling for closing on December 19, 2008; and

Whereas, Effective November 11, 2008, the City and Cobalt entered into a First Amendment to the First Restated PASA, extending Cobalt's contingency period to June 12, 2009, giving Cobalt the right to extend that contingency period for up to 6 additional months beginning on June 13, 2009 and ending on December 12, 2009, and calling for the \$1,800,000 purchase price to increase by \$1,000 for each such month of extension, and extending closing to 20 days after the waiver or satisfaction of contingencies; and

Whereas, Cobalt did extend the contingency period through December 12, 2009 such that the purchase price under the First Amendment to the First Restated PASA was \$1,806,000; and

Whereas, Cobalt is still in discussions with Cudahy regarding TID financing for development of the Property, but desires to go forward with acquisition on amended terms, including a reduced purchase price (due to development and environmental challenges associated with the Property) and a closing on or before March 31, 2010; and

Whereas, Cobalt proposes a Second Amended and Restated Purchase and Sale Agreement (the "Second Restated PASA") that would supersede all past contracts, that would reduce the purchase price to \$1,250,000, that would be free from any buyer contingency and that would establish a closing date on or before March 31, 2010 (but with the ability to extend closing to May 31, 2010); now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the PASA (now the second time it has been restated, so being the Second Restated PASA), a copy of which is attached to this Common Council File, for the purchase and sale of the Property between Cobalt and the City is approved; and, be it

Further Resolved, That the proper City officials are authorized to execute the Second Restated PASA and all other documents required or contemplated thereby, including a deed at closing, and to take the necessary action, on behalf of the City, to effectuate the purpose and intent of this resolution and to close the transaction consistent with the provisions hereof and of the Second Restated PASA; and, be it

Further Resolved, That at such time as the Property is sold, the sale proceeds, less marketing and closing expenses and a 30 percent disposition cost reimbursement to the Redevelopment Authority of the City of Milwaukee, shall be deposited in the City's General Fund.

DCD:DAC:dac

02/17/10