

Report to the City of Manitowoc Finance Committee

Meeting Date: September 5, 2017

Agenda Item: I-43 Tech Park Land Sales Realtor Commission Policy and Recommendation of the Industrial Development Corporation to Approve

Reason for Request: The City recently received a letter of intent to purchase lands in the I-43 Tech Park. The LOI was presented by a commercial real estate broker, and it included payment of a brokerage commission at 10%. The City was not able to approve the LOI, as there is no policy in place to determine whether a 10% commission is acceptable.

Report: While it still appears to be a fraction of Wisconsin's business and industrial parks that offer a realtor commission with a land sale, there is a growing number of municipalities and counties that do offer a commission. Based on a sampling of Wisconsin cities and counties, the rates vary widely around the state from as little as 3% to as much as 19%. For some points of reference within our surrounding region, the City of Fond du Lac offers a 6% commission, and the City of Sheboygan offers a 7% commission. Neither Appleton nor Green Bay appear to offer a commission. The lower commissions are generally found near larger metro areas like Madison and Milwaukee, and the highest commissions are generally found in smaller, more rural communities.

The Community Development Department has found that our I-43 Tech Park land sales have been minimal in the recent past. As an example, the available parcel near Custer Street and Dufek Drive, with I-43 visibility, should have already sold in today's market conditions. City Staff have limited time for marketing these properties, so it could be beneficial to offer a broker commission. We would encourage the Common Council to consider adopting a related policy. Based on other business parks in eastern Wisconsin, a 6 to 7% commission would be competitive.

The Manitowoc Industrial Development Corporation (IDC), which oversees land sales in the I-43 Tech Park, has reviewed the draft policy and is recommending approval.

Recommendation: The Community Development Department recommends the adoption of the attached policy and MOU establishing a 6% realtor commission and a process for protecting the City's and IDC's interests.

**MEMORANDUM OF UNDERSTANDING
REGARDING SELLER'S BROKERAGE COMMISSION**

STATEMENT OF POLICY

The development of publicly owned property within the City of Manitowoc is often the product of a successful public-private partnership. The terms and conditions outlined in this Memorandum of Understanding ("MOU") are intended to govern public-owned land transactions between the City of Manitowoc, as seller, and brokers in broker assisted sales. The parcels covered by this MOU are located within the Manitowoc I-43 Technology and Enterprise Campus. Since the City of Manitowoc may choose to incentivize certain projects through below market sales of publicly owned property, this MOU will protect brokers' commissions for those brokers bringing transactions to the City of Manitowoc's attention which result in successful closings. It is the intent of the City of Manitowoc to incentivize regional brokers to become actively involved with the opportunities hereunder.

MEMORANDUM OF UNDERSTANDING

NOW COMES the City of Manitowoc ("City") and _____ ("Broker") and, in consideration of the following mutual obligations, agree as follows:

1. The City offers for sale parcels at the prices shown on Exhibit A attached. The parcels offered as available for sale are subject to change from time to time by the City and the Broker should confirm the availability of any parcel of interest.
2. Any real estate Broker appropriately licensed to conduct business in the State of Wisconsin shall be able to sell (under terms and conditions approved by the City) and receive a commission upon a successful closing on any of the above properties; provided that the Broker otherwise meets these terms and conditions. Brokers eligible for commission shall be paid this commission by the City at closing in the amount of six percent (6%) of the gross listing price for the property sold, regardless of the actual or "incentivized" sales price.
3. This MOU shall be effective from the date of execution hereof until _____, 2018, unless earlier terminated. Either party may terminate this MOU upon 30 days advanced written notice to the other; provided, however, that the City may not terminate the agreement as to any "pending transaction." A "pending transaction" shall be defined as any written offer submitted by a Broker to the City for consideration and discretionary action by the City, its committees, or other applicable government agency(ies) prior to, or within 60 days after, the City's delivery to the Broker of a notice to terminate this MOU; provided such offer, or any subsequent counter offer, to purchase receives final approval by the City.
4. The Broker agrees to communicate and coordinate with the City of Manitowoc for the purposes of coordinating government licenses or permits needed by the buyer and maximizing business development incentives.
5. The Broker understands and agrees that the City will continue to market the subject property by its own efforts, too, as well by the efforts of other Brokers who enter into similar MOUs with the City. This MOU is not exclusive.

6. The City reserves the absolute right to accept or reject any Broker procured offers and shall have the sole discretion to determine the acceptability, suitability, and sufficiency, and may amend, modify, and/or condition any such Broker procured offer and make one or more counteroffers at its sole discretion including, but not limited to, any proposed end use of the property. Should the City either reject an offer or should an accepted offer fail to close, the Broker shall be entitled to a full commission at closing on any subsequent sale by the City to the same buyer where such sale arises from an offer accepted within 12 months of the original offer rejection or the scheduled closing date for the failed closing; provided the Broker is otherwise in compliance with these terms and conditions, unless another Broker becomes involved with the same buyer and property, in which event all Brokers involved shall pro-rate the one (1) City paid commission calculated as set forth above.
7. The Broker understands and agrees that any sales agreements are subject to the formal approval of the Common Council of the City of Manitowoc
8. The Broker agrees to disclose any and all conflicts of interest, including, without limitation, contracts or agreements, between the Broker and the buyer or other financial arrangements and interests of whatever kind or nature. In such cases, the Broker must make full disclosure to the City and in no case will the City pay any portion of a buyer's commission to Broker. In no event will the City pay any Broker commission in excess of six percent (6%) of the parcel's gross listing price or more than six percent (6%) of the parcel's gross listing price for the sale of any individual parcel to any combination of Brokers and/or other persons.
9. The Broker acknowledges and agrees that the City may enter similar or identical MOUs with other Brokers as to the same properties and further understands and agrees that this MOU gives the Broker no exclusive rights as a "listing broker." Broker's commission will not be paid on any transaction where the Broker did not initiate contact with or for the prospect that led to a real estate sale and closing.
10. The Broker understands and agrees that this MOU imposes no affirmative marketing obligations upon the Broker, although the City does hereby grant the Broker the right to market the property as the Broker sees fit (excluding placing signs or other objects on the property) including utilization of regional listing services.
11. This MOU shall be governed by the laws of the State of Wisconsin. Venue for all disputes shall be exclusively a court of competent jurisdiction in the County of Manitowoc, State of Wisconsin. In all instances, all interpretations, ambiguities, conflicts, constructions, meaning, intent, and disputes shall be construed in favor of the City. This MOU does not bestow any third party rights.

Dated _____

City

Signatures follow

Broker