



MANITOWOC PUBLIC UTILITIES

1303 South 8th Street P.O. Box 1090 Manitowoc, WI 54221-1090 920-683-4600 FAX 920-686-4348 www.mpu.org

May 1, 2015

Honorable Mayor Justin Nickels
And Members of Manitowoc Common Council
Manitowoc City Hall
900 Quay Street
Manitowoc, WI 54220

Re: Request for approval to purchase of C. Reiss Dock

Honorable Mayor and Members of Council:

The Manitowoc Public Utilities Commission at its meeting on April 27, 2015 approved purchasing the C. Reiss dock located at 937 South 5th Street, Manitowoc. The purpose of purchasing this property and need of City approval was presented to the City Council in closed session on November 17, 2014. The purchase price of the property is \$600,000.

Following documents are attached:

- Memo from Attorney Steimle highlighting the key issues of the transaction
- Commercial Offer to Purchase
- Addendum A to Commercial Offer to Purchase

The MPU Commission unanimously approved to recommend that the Common Council approve the purchase. Please feel free to call me at (920) 686-4351 for additional information.

Respectfully Submitted,

nilaksh kothari

Nilaksh Kothari, P. E.
General Manager

Attachment

cc: Attorney Kathleen McDaniel, City Attorney



Steimle Birschbach, LLC
Business, Trusts & Estates, Real Estate.

MEMORANDUM

TO: Manitowoc Public Utilities Commission
FROM: Andrew J. Steimle
SUBJECT: Purchase of 937 South 5th Street, City of Manitowoc
DATE: April 22, 2015

The purpose of this memorandum is to outline certain transaction details regarding MPU's acquisition of The C. Reiss Coal Company ("Reiss") coal dock located at 937 S. 5th Street, Manitowoc (the "Property"). Attached is the Commercial Offer to Purchase, which consists of a pre-printed WB-15 Commercial Offer to Purchase, Addendum A to the Commercial Offer to Purchase, and various exhibits. The following is an abbreviated summary of key deal points for consideration by the Commission:

I. COMMERCIAL OFFER TO PURCHASE

A. **Purchase Price:** \$600,000.00

B. **Property:** The Property consists of approximately seven (7) acres, and is vacant with the exception of one abandoned building located on the Property.

C. **Closing Date:** This transaction is to be closed no later than August 31, 2015. Closing can occur prior to this date if agreed to by the parties.

II. ADDENDUM A TO COMMERCIAL OFFER TO PURCHASE

A. Environmental Issues:

1. **C. Reiss Disclosure Requirements.** Prior to closing, C. Reiss must disclose any documents or information in its possession or control regarding environmental conditions affecting the Property if C. Reiss believes that:

(a) There is a reasonable likelihood that the conditions will require MPU to incur remediation, assessments or other costs in excess of \$100,000 for the proposed continued use as a coal storage yard; or

(b) There is a reasonable likelihood that the Conditions will subject MPU to liability in excess of \$10,000 due to enforcement for violations of applicable environmental laws as an owner of the site; or

(c) There is a reasonable likelihood that the Conditions will subject MPU to third party damage claims arising from the Conditions in an aggregate amount that exceeds \$100,000.00; and

(d) C. Reiss must also disclose notices and orders from the DNR or EPA which remain unresolved as of the acceptance date.

2. **MPU Inspection and Due Diligence:** MPU has limited ability to inspect the Property prior to the closing date as follows:

(a) Inspection Period. Prior to closing, MPU has the right to examine the Property Information provided by C. Reiss and to perform or cause to be performed studies, reviews and inspections as deemed necessary or advisable by MPU. However, MPU does NOT have the right to perform any testing of the Property relating to its soil or groundwater.

(b) Termination by MPU during the Inspection Period. Prior to closing, if MPU, *in its sole discretion*, determines that the Property is unsuitable for MPU's intended use or development, or that it is not satisfied with the contents of the Property Information or the results of tests, reviews and inspections, MPU may terminate the Offer with no further obligation to C. Reiss.

3. **MPU Due Diligence to Date:**

(a) MPU has reviewed various environmental materials provided by C. Reiss, and previously in MPU's possession, in anticipation of entering into the transaction for the purchase of the Property;

(b) MPU has retained Attorney Arthur J. Harrington of Godfrey & Kahn to analyze and negotiate the environmental issues affecting the Property;

(c) As part of our investigations to date, petroleum based contamination was discovered presumably from an above ground oil storage tank. The tanks were previously removed. C. Reiss worked with the DNR and received a closure letter for the Property relative to the release.

(d) It is likely that if any contamination exists, it is primarily a result of coal being stored on the property for approximately 100 years. The coal stored on the Property during that time was owned by MPU. It was concluded by Attorney Harrington that MPU would likely be responsible for (or at least be a substantial participant in) any mandatory remediation of the site, and for any third party liability arising from the storage of coal.

4. **Representations and Warranties of C. Reiss:** The agreement requires C. Reiss to represent and warrant that the following are accurate as of the closing date:

(a) Known Actions/Judgments/Etc. C. Reiss has no Knowledge of any actions, judgments, liens, suits, claims or other proceedings pending or threatened against C. Reiss or the Property which might materially affect the proposed transaction.

(b) Known Environmental Issues. Except for those matters disclosed in the Property Information (See Article II, Section A(1)), C. Reiss has no Knowledge of any conditions existing on the Property which represent a violation of applicable environmental laws that would reasonably be expected to result in substantial (i.e. costing in excess of \$100,000) cleanup liability.

(c) Waterfront Issues. C. Reiss has no Knowledge of any shore land zoning, flood plain, public trust and/or wetland conditions existing on the Property that is reasonably likely to materially impede MPU's anticipated use of the Property as a coal storage yard.

These representations and warranties survive the closing for 5 years, and are limited to the knowledge of William "Bill" Reiss Jr. and David Seversen.

5. **Assumption of Post-Closing Liability by MPU.**

(a) If MPU elects to proceed with the purchase of the Property, MPU will be purchasing the property "AS IS", with all faults and defects.

(b) C. Reiss will have no liability to MPU for any existing condition affecting the Property, unless C. Reiss had Knowledge of such environmental conditions and did not disclose such matters as required in Addendum A. MPU is effectively assuming all disclosed and all unknown risks related to the physical condition of the Property, including without limitation environmental liability.

(c) This assumption of liability extends to third parties that may have sustained or sustain damages in the future as a result of the condition of the Property.

6. **Permit Transfers.** MPU will assume all responsibility for and cost of obtaining and maintaining all necessary permits and licenses as may be necessary or required for MPU's operation of the Property whether through MPU's own application or, when possible, through assignment of C. Reiss' current permit or license to MPU.

7. **Guaranty of the City of Manitowoc.** The closing of this transaction is contingent on MPU obtaining the guaranty of the City of Manitowoc, as set forth in the form of Guaranty attached to Addendum A as Exhibit B.

B. Deed Restrictions:

The following restrictions and covenants will be recorded with the deed conveying title from C. Reiss to MPU (substantially in the form attached as Exhibit C to Addendum A), or in a separately recorded document:

1. **Rezoning of Property.** MPU may not rezone the Property, or obtain a variance from applicable zoning, for any other use than industrial use unless the Property is remediated to support such changed use in accordance with the requirements of the state environmental agency's laws, rules and regulations, and MPU or its successor in title obtains written confirmation from the state environmental agency that all such remediation has been fully and completed.

2. **Right of First Refusal Re: Potential Use of Property or Operations for MPU.** A Right of First Refusal in the Property is granted to C. Reiss in the event MPU:

(a) Decides to utilize the services of a third party on the Property for purposes involving the handling, storage, transport, or sale of petroleum coke, coal, and/or other bulk commodities typically handled by C. Reiss; or decides to make the Property available to a third party for the same.

(b) The right of first refusal does not apply to any proposed one-time use of the Property for which the activities and operations would not exceed two (2) months in duration and for which there is no reasonably likelihood for such ongoing or future use of the Property to occur thereafter at the time of such one-time use.

(c) The right of first refusal automatically terminates on December 31, 2020.

3. **Restrictions on Soil and Groundwater Use.** Restriction on the use of soil and groundwater as set forth in the Final Case Closure with Continuing Obligations dated March 19, 2015 and associated GIS registry.

4. **C. Reiss Post Closing Access.** C. Reiss and its agents shall have the right to enter the Property at reasonable times upon not less than thirty (30) days advance written notice for the purpose of conducting environmental investigation, cleanup and other remedial or response activities which do not unreasonably interfere with the current use of the Property.



5. **Modifications, Revisions and Termination.** MPU (and any and all successors in title to the Property), agree to and shall execute and record any further modification, revision or termination of the restriction(s) required by the Addendum if such restriction modifications are reasonably requested by C. Reiss or required by applicable law.

C. **Miscellaneous Title Issues:**

1. **Public Trust Doctrine Title Exception.** To be discussed at the meeting.

2. **Other Easements Affecting the Property.** There are miscellaneous easements showing on title that have been analyzed and discussed with MPU and MPU has concluded that none are material to the transaction.

