**COUNTY OF MILWAUKEE**

# INTER-OFFICE COMMUNICATION

**DATE:** March 16, 2015

**TO:** Supervisor Marina Dimitrijevic, Chairwoman, County Board of Supervisors

**FROM:** Teig Whaley-Smith, DAS Director

Guy T. Mascari, Technology Innovation Center Director

**SUBJECT:** **Amendment to County Lease with Milwaukee County Research Park Corporation (MCRPC) and Acceptance of Vacant Land Offer to Purchase**

**POLICY**

The Director, Department of Administrative Services (DAS) and the Milwaukee County Research Park Corporation (“MCRPC”) are requesting that the County Board approve (a) an amendment to the Lease between the County and MCRPC for the Technology Innovation Center (the “TIC”) building located at 10437 Innovation Drive, Wauwatosa, Wisconsin and (b) an offer to purchase from MCRPC for vacant Lots 1, 10, and 21 located within the Milwaukee County Research Park (the “Research Park”).

**BACKGROUND**

In the early 1990s Milwaukee County entered into several agreements with MCRPC. These agreements have been amended over time and include a Conveyance Agreement that gives the authority to MCRPC to sell the vacant land at the Research Park and a TIC Lease Agreement that allows MCRPC to operate the TIC building.

As the Research Park has matured, there are only about 4.5 acres of developable land left at the Research Park, or about 3.8% of the initial 120 buildable acres. Also, the TIC Lease Agreement is set to expire in 2018. Consequently, the County Board recognized the need to develop a strategy for what happens with the remaining land and the TIC building at the Research Park. At the July 15, 2013 meeting of the Economic and Community Development Committee a request was made for the Economic Development Division (the “ED Division”) to work with MCRPC to develop a strategy for the TIC building. After several monthly meetings it became apparent that a strategy was also needed for the remaining vacant land at the Research Park.

After several months of strategizing and negotiations, MCRPC and the ED Division recommended a three prong strategy: (1) amend the TIC Lease Agreement to allow MCRPC to control its own destiny; (2) of the remaining land that is immediately developable, identify a developer to buy and develop the land; and (3) of the remaining land that is not immediately developable, sell the land to MCRPC so that they can assemble the land and remove barriers to development. A map of the remaining land and the ultimate strategy for each is attached as Exhibit A. MCRPC Board actions are contained in resolutions attached hereto as Exhibit B.

1. **Amend the TIC Lease Agreement**

In March of 1993, Milwaukee County entered into a Lease agreement with MCRPC for a building at 10437 Innovation Drive in Wauwatosa, WI. The building, formerly known as the Muridale Tuberculous Sanitarium (M-1), is located adjacent to the Research Park and was to be used as an incubator facility for businesses in the technology field. The M-1 building was renamed the Technology Innovation Center. The original lease agreement stated that MCRPC’s rent to the County would be a percentage of the base rent collected for that month. In return, Milwaukee County would be responsible for all mechanical and structural (including the roof) maintenance and repairs to the building.

This amendment to the lease alters the rental agreement, where MCRPC will be paying $1.00/year for 2015 with additional options of $1.00/year for 2016, 2017, and 2018. The amendment would also remove the County from its obligation to cover all mechanical and structural maintenance and repair costs associated with the TIC building. Finally, the Lease Amendment calls for MCRPC to have a 12-month option to purchase the TIC building and land from the County for $1.00, to commence upon the effective date of the amendment, attached hereto as Exhibit C.

1. **Sale of Developable Land**

Pursuant to the Conveyance Agreement, MCPRC accepted an offer to purchase lots 8, 9, 12 and 22. No County Board approval was needed for the sale. There were, however, several abandoned utility easments that needed to be removed by the County. A release of these easements was approved pursuant to County Board Resolution #14-936. Subsquently, the sale of all four (4) parcels closed on January 7, 2015. Out of the sale proceeds of about $2,130,000 the County netted approximately $1,271,000.

1. **Transfer of Undevelopable Land to MCRPC to Remove Barriers**

Lots 1, 10 and 21 will be difficult to develop because the buildable area of each lot is a little over one acre (partly because of setback requirements) which is not large enough to attract the highest and best use of the land. Furthermore, Lot 21 is in the middle of these three lots and currently has a large area covered by WE Energies utility infrastructure under a series of easements and a structure known as the M-10 building, which is owned by WE Energies. Intense work will be needed to remove the WE Energies easements and assemble the land. MCRPC is most familiar with the challenges of this site and has also had great success in negotiating past development. Consequently, it is recommended that these lots by sold directly to MCRPC.

MCRPC has submitted an offer to purchase Research Park Lots 1, 10, and 21 for $317,281.00, attached hereto as Exhibit D. MCRPC would hold and maintain the lots for possible future development. The M-10 building used to house several boilers and steam distribution lines that serviced many of the original structures located at the County Grounds. Since the Zoo Interchange reconstruction resulted in the elimination of steam service to land west of the U.S. Highway 45, the M-10 does not fulfil its original purpose. WE Energies has the easements in place and still owns the M-10 building that housed the boilers. In order for MCRPC to proceed with any development, an agreement would need to be made with WE Energies to release the easements and dispose of the building in some way.

**SUPPLEMENTAL INFORMATION**

In response to a series of questions raised at the Economic and Community Development Committee meeting held on January 26, 2015, the following supplemental information is provided.

1. **Distribution of Land Sale Proceeds to MCRPC and build up of Reserves**

At the committee hearing there was mention of a “$4 Million Endowment.” The correct description of these funds, however, is “Contract Fees paid by Milwaukee County.” The Conveyance Agreement executed in 1996 requires Milwaukee County pay 35% of land sales proceeds to MCRPC for its services in working with developers to achieve successful complex deals that result in land sales (the “Contract Fees”) [See Conveyance Agreement, 3rd Amendment, 2(e)]. As testified by Guy Mascari from MCRPC, the $4 million is the reserve that MCRPC has built up from these Contract Fees and the return on prudent investing of these funds is estimated to be about 27%.

The Contract Fees have also been used by MCRPC for other purposes. Of the approximately $5.5 million received by MCRPC out of the total land sales of about $16.5 million, $1.4 million was used to build-out the fourth and fifth floors of the TIC building and build state-of-the-art laboratory space. $800,000 has been used as operating capital, replacing tax levy that was previously given to MCRPC. With the land sale closing previously described the reserves now total approximately $4.5 million (the “Reserves”).

As the “safety net” that has been provided by the County is removed by virtue of the TIC lease amendment under consideration, it is critical that MCRPC retain the Reserves. This will allow MCRPC to sustain occupancy swings due to tenant graduations and economic downturns, and meet unexpected maintenance and repair issues.

The Conveyance Agreement which was summarized in the report for File 15-101, is summarized again below. Nothing in the previous File 15-101, or this file, amends the Conveyance Agreement. Only the TIC lease will be amended. Consequently, the County and MCRPC continue to control their respective rights as listed above.

1. **Make-up of MCRPC Board and Transition to a Successor Organization**

MCRPC controls its own budget and resources; consequently the County does not control MCRPC’s expenditures, other than through the appointments that it makes to the MCRPC Board. The exception is that if MCRPC ceases operations, in which case the By-Laws require that those funds be given to Milwaukee County for the purposes that MCRPC was set up (By-Laws 8.03).

MCRPC currently has fifteen (15) Board members, which includes the following:

1. (1) County Executive’s Representative (No Confirmation by County Board Required).
2. (5) County Board Members appointed by County Board Chair (No Confirmation by County Board Required). Although no longer required, most of these board members have been members of the ECD Committee.
3. (9) County Executive’s Appointees, eight of which shall be private citizens or representatives of institutions of higher learning and one shall be an official of the City of Wauwatosa (County Board Confirmation Required).

Concerning the question of whether there needs to be a development agreement to specify the relationship of the County and MCRPC going forward, the following is pertinent. As summarized below there are already documents in place that currently define this relationship. It is anticipated that MCRPC, through its strategic planning, may later request changes to its By-Laws and/or incorporate its By-Laws in part and/or assign other documents to a successor organization. Such changes would require County approval as stated below in the summary of documents. In any future requests, however, it is important to note that MCRPC has long ago agreed to not request any future County funds for its operations: “MCRPC shall agree not to request tax levy to support its operations” (1998 Amendment to Conveyance Agreement).

MCRPC is currently studying the desirability of changing the not-for-profit status of MCRPC from a 501(c)6 (commercially oriented organization - initially required because of MCRPC’s land development operations) to a 501(c)3 (educational, scientific, religious, or charitable organization – which is suitable for a business incubation operation or other activities that assist entrepreneurship, among other things). It is likely that rather than change MCRPC’s status, this would be accomplished by transferring assets and TIC/Research Park governance to an existing entity. Also, under consideration is transferring current board members in such a way that eventually control of board appointments would shift from the County to a self-perpetuating board, similar in some ways but not all ways to the boards of the cultural organizations associated with the County. Shifting from a 501(c)6 to a 501(c)3 would give MCRPC significant advantages in fund raising, especially grants from foundations, corporations, and individuals, plus other tax benefits.

This endeavor is complex and the MCRPC board is expected to take this under consideration as the organization absorbs the new operational aspects of the TIC building. MCRPC expects to return for the required County approvals later this year, including approval of changes to the MCRPC By-Laws to allow the transfer of the Reserves to a successor entity. MCRPC expects to have at that time a detailed “development” plan and agreement. In addition to the Reserves, the assignment of the obligations and rights of the County and MCRPC under the Declaration of Covenants, Conditions and Restrictions of the Milwaukee County Research Park, the Design Guidelines and several other documents will require mutual approval. One last point, regarding the Reserves, if a successor entity that the Reserves are transferred to ceases operation, it would be appropriate that they be given to the County for similar purposes (mirroring the current requirement).

As these issues are worked out by MCRPC, it is important the timeline established below be met in order for MCRPC to proceed in an orderly fashion while assuming the new maintenance and repair obligations and give necessary assurances to TIC tenant businesses (many doing important scientific research and expanding) that the future of the TIC is in the hands of MCRPC and will be around for a long time.

The MCRPC By-Laws were not initially discussed in the previous File 15-101 report because nothing in file 15-101, or this file, amends the By-Laws and the County and MCRPC would continue to control their respective rights. Furthermore, By-Laws section 8.02 specifically states that they cannot be amended without County Board approval. The By-Laws are attached hereto for informational purposes.

1. **Timeline**

As stated in the exhibits to the report for file 15-101 the timeline is three (3) months of due diligence on the offer for the vacant land and twelve (12) months due diligence for the option on the TIC building. The initial timeline was submitted as file 14-936 on November 24, 2014. Given the delay, these timelines are no longer valid. The current timeline is as follows:

1. Fifth Amendment to TIC Lease (the “Lease”)

* Wednesday April 15, 2015: Target date for execution of the Lease
* Wednesday July 1, 2015: Effective date of the Lease
* Thursday December 31, 2015: End of the first term of the Lease. Automatically renews for three (3) one-year terms until the end of 2016, 2017, and 2018.
* Thursday June 30, 2016: Termination of MCRPC option to purchase the TIC building for $1.00.
* Friday December 31, 2016: On or before – County and MCRPC close on the purchase of the TIC building, if the option is exercised.

1. Offer to Purchase Lots 1, 10 and 21 (M-10 Lot) (the “Lots”)

* Wednesday April 15, 2015: Date by which County must accept MCRPC’s offer to purchase.
* Wednesday July 15, 2015: End of MCRPC 90-day due diligence period.
* Friday August 15, 2015: On or before – County and MCRPC close on purchase of the Lots.

1. **Summary of Documents.**

There are five (5) primary documents that define the relationship between the County and MCRPC. Here is a summary of the documents (document titles abbreviated):

1. **Conveyance Agreement (1996)**. This agreement essentially gives all the authority to market and sell fee interest in research park land to MCRPC, provided that the requirements set forth in the Declaration are met. This is the agreement that splits the net land sale proceeds 65% to the County and 35% to MCRPC. The County has no rights to the 35% collected by MCRPC as Contract Fees or the Reserves built-up by prudent investment of them (except in the event of dissolution). As with any contract, it cannot be amended without the consent of both parties.
2. **Declaration (1994).** This document is a binding and enforceable restriction on the use of Research Park land for research and other purposes and “runs with the land.” It cannot be changed without the consent of the County (Declaration Article VIII) or in the case of material adverse impact by research park occupants. The Declaration is incorporated into every development agreement between MCRPC and land buyers. There is a Supplement to the Declaration that obligates park occupants to pay common area charges to the MCRP Occupants’ Association and a research development fund fee to MCRPC, among other things. Research Park Design Guides are incorporated into the Declaration.
3. **MCRPC By-Laws as amended (2003 and 2009).** This cannot be amended without County approval (Section 8.02) and specifies among other things board appointments and terms.
4. **TIC Lease (1992).** This document leases the TIC Building to MCRPC through September 30, 2018. This is the document that establishes the current base rent at $7.50 (with exceptions approved in the past by the DAS Director for “rough space in the basement”) with 2/3 paid to the County. This is the only document that MCRPC is requesting a change to. The changes are specified in Report 15-101 and can be summarized as: (i) adding Outlot 1 to lease premises, (ii) reducing rent to $1.00 in exchange for MCRPC taking on capital costs and mechanical and structural maintenance and repair costs and (iii) giving MCRPC an option to purchase the building for $1.00. These are all changes that are mutually beneficial to MCRPC and the County. It is beneficial to MCRPC in that their rent is reduced and they can control maintenance and other costs. It is beneficial to the County in that it can redirect much needed resources (that otherwise would be used to maintain the TIC building and its systems) now that MCRPC is a stable entity with significant cash flow and nearly $4.5 million in Reserves.
5. **Ground Lease (1992).** Agreement between the County and MCRPC that governs the development of land at the research park. As land is sold to third party developers, it is removed from the Ground Lease. The same thing will happen upon the sale of Lots 1, 10, and 21 to MCRPC. Once all land is sold this document will terminate by virtue of its terms and conditions, although formal action may be required.

Please note that all these documents, originally negotiated in the 1990s, include significant decision making authority given to MCPRC, including final determination on uses and users. Nothing in the previous file 15-101, or this file, changes these original documents, except the Lease as stated above.

**RECOMMENDATION**

The Director, Department of Administrative Services (DAS) recommends approval of the Fifth Amendment to the TIC Lease and Acceptance of the Offer to Purchase for Lots 1, 10, and 21.

Teig Whaley-Smith Guy T. Mascari

Director, Department of Administrative Milwaukee County Research Park Corp.

Services (DAS) Technology Innovation Center Director

Attachments

Exhibit A – Remaining Parcels at Milwaukee County Research Park

Exhibit B – MCRPC Resolutions

Exhibit C – SB Friedman Report

Exhibit D - Fifth Amendment to the TIC Lease

Exhibit E – MCRPC Offer to Purchase Lots 1, 10, and 21

Exhibit F – Conveyance Agreement (1996)

Exhibit G – Declaration (1994)

Exhibit H – MCRPC Bylaws

Exhibit I – TIC Lease (1992)

Exhibit J – Ground Lease (1992)

cc: Chris Abele, County Executive

Milwaukee County Board of Supervisors

Don Tyler, Director, Department of Administrative Services

John Dargle, Director, Parks Department

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