

BALLPARK COMMONS

TERM SHEET

The purpose of this Term Sheet is to outline critical factors that will be included in an Option to Purchase the land identified in Exhibit A (“Property”). The term sheet will be used to (a) produce the report, resolution and other information needed to report to the County Board for action on elements within their domain, and to the Certifiers (defined below) on elements within their domain; and (b) produce the final Option or Offer for execution by the parties, and consequently the final closing documents if the Option is executed.

1. Purchase Price

It is important that the public receive fair value for transferring the land to the Developer. The County has ordered an appraisal of fair value of the Property, without consideration of ongoing operating costs or environmental liability. The primary liability of the site going forward is related to operational costs, consequently the Purchase Price shall be the appraised value of \$840,000 less the accumulated Operational Costs paid by the Buyer outlined in Section 3, but in no case shall be less than \$1.

2. Capital Cost

There are not sufficient amounts budgeted in either the Buyer’s proforma, or the current TID proforma to cover the future expected capital costs of maintaining the landfill infrastructure (including the gas system, leachate system and monitoring wells). Because the purchase price is likely to be significantly offset by the ongoing operating costs, a different source of capital improvements needs to be identified. After reviewing the TID proforma, there may be significant room to include these costs.

The Franklin Landfill Infrastructure Pre-Design Report prepared by AECOM for Milwaukee County (dated May, 2014, certified March 17, 2014), provides current estimates of costs that will be relied upon in preparing the Option. For purposes of this term sheet, work to be completed by Developer is described more generally below. As part of the Option, the Developer agrees to make the following new improvements:

Project	Estimated Cost	Year
Completed by County – replace Eastern landfill gas system leg	\$288,000	2016
New Construction –landfill gas system installation	\$3,412,000	2018
subtotal	\$3,700,000	
New Oak Leaf Trail Improvements	\$170,000	2018
Total	\$3,870,000	

- A. County Contribution. The Option will convey the following contribution by County to Buyer.

Project	Estimated Cost	Year
Eastern landfill gas system leg	\$288,000	2016

- B. TID/Developer Contribution. The Option will be contingent upon developer successfully petitioning the City of Franklin to amend the TID to include the following costs.

Project	Estimated 2017 Cost
New Construction – Total landfill gas system installation (<i>\$1,780,000 already included in existing TID</i>)	\$3,700,000
New Oak Leaf Trail Improvements (<i>already included in existing TID</i>)	\$170,000
TOTAL	\$3,870,000

* Actual interest costs are dependent on where in life of TID developer is reimbursed for Costs

- C. Reserve Fund (County/Developer). The Option will require developer to create a trust fund to pay for the following costs in 2038:

Project	Estimated 2017 Cost	Estimated 2038 Cost
New Construction – replace landfill gas system	\$3,700,000	\$4,909,000

The above (A) – (C) are estimates. The Developer is responsible for actual cost and all project implementation of the items listed above. Scope of each project must be approved by the Wisconsin DNR. If no Wisconsin DNR approval is necessary, then the scope must be approved by Buyer’s environmental engineer (“Site Consultant”) that the scope is appropriate to protect the health and safety of individuals on or adjacent to the Property (“Engineer’s Opinion”). A copy of the DNR approval or the Engineer’s Opinion shall be given to County prior to proceeding with repair. The Site Consultant is The Sigma Group, Inc., and any replacement Site Consultant must be approved by the County and Buyer.

The trust fund identified above shall include the annual contributions of each party as follows:

Time Period	County	Buyer
Until the TID is closed and no further TIDs (estimated Years 1-20)	Tax share received (Estimated \$20,000)*	\$127,000/year estimated
Once all TIDs are closed (estimated Year 21) and beyond	30% of taxes received by County for properties in current TID*	— See below

* County’s contribution shall be the extent to which funds have been received from property taxes paid within the current TID area, and there are no arrears. County funds shall be capped to the extent that they are needed.

Trust funds may only be used for replacement of the gas extraction system when required in the opinion of the Site Consultant, currently estimated to be 2038 and 2058 and 2078, or for any other landfill infrastructure costs or improvements that are necessary to comply with local, state or federal agency requirements. [The Developer is committing to estimated contributions of \\$136,000 annually for years 21-40 and \\$186,000 annually for years 41-60, and thereafter as required and as described below.](#) If there are any remaining proceeds in the trust after 2080, Site Consultant shall provide an Engineer’s Opinion whether there is a continuing need to operate or replace the gas extraction system or other landfill infrastructure to comply with local, state or federal government requirements. [If such Engineer’s Opinion indicates a continuing requirement to operate or replace the gas extraction system beyond 2080, County and Buyer shall continue to make their respective contributions as described above until such time as an Engineer’s Opinion determines that the operation and replacement of such gas extraction system is no longer required. Upon delivery of an Engineer’s Opinion that such operation and maintenance obligation is no longer required](#)~~If not~~, any remaining trust funds shall be distributed as follows; and no further contribution shall be required by County: 70% to County and 30% to Buyer (if trust fund closes in 2080); 80% to County and 20% to Buyer (if trust fund closes in 2090); 90% to County and 10% to Buyer (if trust fund closes in 2100); and 100% to County (if trust fund closes after 2100).

3. Operational Cost

The annual cost to operate the landfill gas system is estimated to be approximately \$167,000 in 2017 and is expected to increase at 2.5% per year (“Annual Escalated Cost”). Buyer will pay the actual amount annually to operate the system. The Annual Escalated Cost, or actual cost paid by the Buyer during the Term of the TID, whichever is less, will offset the purchase price. If these funds are not expended by the Buyer for eligible costs

while the landfill is still being operated, any remaining balance of the purchase price will be due to the County. In no event shall the purchase price be less than \$1.

4. Crystal Ridge Drive and Old Loomis Road.

The County, prior to closing, shall decommission Crystal Ridge Drive as a county highway, and those portions of Old Loomis Road, as requested by Buyer, so that those portions of Crystal Ridge Drive and Old Loomis Road shall be transferred over to the Buyer. This action shall require County Board Approval.

5. Environmental

- A. The purchase would be “as-is” related to physical condition of the Property.
- B. Currently, the readings of the gas monitors between the Property and residential areas are functionally zero. Without additional use and with proper operation and maintenance of the existing methane system, it is expected monitors would continue to read zero. Consequently any readings above legal limitations after the date of closing would likely be because of Buyer’s activities and Buyer will provide full indemnification to County from Buyer activities. In addition, Buyer will indemnify County for: (a) remediation or investigation (“Corrective Action”) required as a result of any new releases that occur after closing, and (b) claims related to managing and properly disposing of any materials excavated during construction of Buyer Improvements (“Excavation Activities”). If Buyer discovers any materials prior to closing that it is unwilling to assume this liability for, Buyer’s sole remedy shall be to not exercise the option. This indemnity shall not include Corrective Actions or third party claims related to contaminants that have migrated from the Property prior to closing. Final indemnification language in the option must be approved by County’s Corporation Counsel.
- C. County will transfer to Buyer the DNR closure letter for the landfill, water quality monitoring, landfill cap maintenance and any orders as of the date of closing. Buyer will be responsible for DNR compliance. If there is no compliance after a cure period, full purchase price shall be due from Buyer and shall be used for compliance.
- D. County will reasonably cooperate if Buyer elects to assert a claim against parties other than the County who may be responsible for having caused contamination or having deposited waste at the Landfill (“Responsible Third Parties”), which may include assigning its rights to Buyer for contribution or injunctive relief from Responsible Third Parties to the extent Buyer incurs costs or undertakes obligations. County may require, as a condition of County assigning its rights, that Buyer defend any counterclaims or other claims and reimburse any damages against County related to Responsible Third Parties and the Property and Buyer must first receive the approval of the County’s Corporation Counsel.
- E. Except as specifically set forth above, nothing in this Agreement is intended to create an obligation by either party to indemnify the other party for any requirement to comply with an order or directive of the State of Wisconsin or

United States relating to Environmental Laws (“Corrective Action Order”), but the Parties agree to reasonably cooperate in complying with any such Corrective Action Order.

6. Community Benefits.

The County typically includes the following community benefits when it sells land with significant value: prevailing wage, resident training and hiring, and disadvantaged business goals. When these are required, there is typically an offset to the purchase price or funds in the TID to cover these expenditures. Here, the land has been discounted completely in order to offset the environmental costs assumed by the Buyer. Also, there have been no resources included in the TID to offset these costs. Despite these limitations, Buyer has, with respect to Buyer’s Improvements on the Property, agreed to (a) include in each subcontract a requirement that the subcontractor meet with a state recognized pre-apprenticeship program to identify hiring opportunities, and (b) work with the County’s CBDP department to meet a goal of 17% DBE for professional services, and 25% for construction contracts. If additional funds are added by the City of Franklin to the TID for purposes of workforce training and prevailing wage, then Buyer shall be responsible for implementing the County’s standard community benefits requirements.

7. Option Structure

6 month Option to Purchase with one 6 month extension for conducting due diligence. Buyer will be provided a right of entry to complete any due diligence. Option fee of \$10,000 will be nonrefundable (except as listed in section 8 below)

8. Due Diligence

Any environmental inspections will require County Corporation Counsel pre-approval. Any areas of physical testing would be restored to existing condition by Buyer. Milwaukee County will provide copies of all existing environmental reports and other due diligence documents, including historical records and reports that pertain to the condition and operation of the Property and landfill infrastructure.

9. Title

Option will include a requirement that County provide a title insurance policy insuring clear and marketable title free from exceptions other than Permitted Exceptions. If County cannot provide such title insurance Buyer may acquire Property “as is” related to title encumbrances or terminate the option and receive a reimbursement of the Option Fee.

10. Buyer

BPC County Land LLC, may not be assigned without permission of County.

11. No County Contribution

Except as contemplated above, the County will not contribute to any operating or capital costs of the Property.

12. Public Easement

The Buyer understands that the Oak Leaf Trail and planned Oak Leaf trail extension on the Property and in other areas of the Ballpark Commons development will be maintained by Buyer for public use consistent with sections of the Oak Leaf Trail throughout Milwaukee County. An easement will be required at closing.

13. Public Records

Buyer understands that Milwaukee County is subject to Public Records requirements. Prior to presenting the Option, some records can be protected from Public Records requests. Most details, however, will be public record once the Option is presented to the Board of Supervisors. Finally, after the option is executed most records will be subject to Public Records requests.

14. Termination of Lease Rights

Upon transfer of Title to the Property, the Buyer and Seller acknowledge that the Maintenance and Operating Agreement will be declared null and void pertaining to all areas of the Agreement including the ski hill in the Village of Greendale which is not subject to this Term Sheet (except for provision 15 below). Only the land located in the City of Franklin, that is subject to the lease shall be transferred to Buyer. This provision shall require County Board Approval.

15. Property in Greendale.

Pursuant to section 14 above, the Buyer's current lease will be terminated. The land in Franklin will be sold to Buyer ("Franklin Land"), but the remaining land in Greendale will be retained by County ("Greendale Land"). The Greendale Land will be subject to a storm water easement for the benefit of the Franklin Land in an area established by County and Buyer prior to executing the Option. Buyer shall be entitled to continue to use the Greendale Land under a revocable license for the purposes of mountain biking, cross county and downhill skiing, outdoor haunted hikes, a zipline, and for no other purposes except recreational uses that may be approved by the County, pursuant to County Board approval. Other than uninhabited structures ancillary to recreational uses (such as ski lifts or zipline poles), no structures may be installed on Greendale Land without County Board approval. Buyer will have continuing access to the Greendale Land for purposes of monitoring, maintenance and replacement of landfill infrastructure. Provisions to protect nearby residents of Franklin and Greendale will be consistent with the existing Maintenance and Operating Agreement related to noise and light will be included in the new lease.

16. Nonbinding.

This term sheet does not constitute a binding contract, and the parties do not intend to be legally bound unless and until a definitive Option to Purchase and related documents have been executed by both parties. The signatures below indicate an understanding of what Buyer's offer is and what will be presented to the County Board and the Certifiers under Wis. Stats. 57.12. If approved by the County Board and Certifiers, final documents will be prepared.

Executed this ____ day of _____, 2017.

BPC County Land LLC

By _____

Name _____

Title _____

Date _____

Exhibit A
Property