

MILWAUKEE COUNTY BOARD OF SUPERVISORS

DATE: June 22, 2017

AMENDMENT NO. 1 to Item 19

Resolution File No. 17-366

Ordinance File No.

COMMITTEE: Parks, Energy, and Environment

OFFERED BY SUPERVISOR(S): Weishan, Jr.

AMEND THE WHEREAS CLAUSE BEGINNING ON OR NEAR LINE 15 IN THE RESOLUTION AS FOLLOWS:

WHEREAS, since 2012, the former landfill has been operated as an outdoor sports recreational facility under a Sports Park Maintenance and Operations Services Agreement (“Agreement”) with The Rock Sports Complex LLC (“Operator”); and

AMEND THE BIFR CLAUSE BEGINNING ON OR NEAR LINE 43 IN THE RESOLUTION AS FOLLOWS:

BE IT FURTHER RESOLVED, that the County Board hereby authorizes the Director of Economic and Community Development, together with Corporation Counsel and the Comptroller, to draft an Option to Purchase, Lease, and Maintenance Reserve Fund Trust Account Agreement (“Final Documents”) which shall include all the items in the Term Sheets, as approved by the County Board; and

AMEND THE ATTACHED BALLPARK COMMONS TERM SHEET AS FOLLOWS:

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 primarily 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, The Buyer will need to identify 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 (\$1,780,000 already included in existing TID)	\$3,700,000
New Oak Leaf Trail Improvements (already included in existing TID)	\$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 \$400,000)*	\$127,000/year estimated
Once all TIDs are closed (estimated Year 21) and beyond	30% of taxes \$0 per year 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 need to be verified by receipt of services rendered, to be provided to the County. ~~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 Annual Escalated Cost ~~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.

Contingent upon the terms and conditions being met in the City of Franklin's adopted authorizing resolution and the consent of the Wisconsin Department of Transportation, 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 are 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 CDBP department to meet a minimum goal of 17% DBE for professional services, and 25% for construction contracts, (c) ensure that after construction is completed, a living wage is provided to workers in any mixed use development on the property, (d) provide affordable housing for equal to 10% of the mixed-use residential development on the property constructed by the Buyer, and (e) the Buyer agrees to commit no less than \$20,000 in funding annually to develop and implement programming and scholarships for low income minority and low income children in Milwaukee County. 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~~ \$50,000 will be applied towards the purchase price of \$840,000; if the Buyer fails to conduct the due diligence, the option fee 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), **by July 1, 2018, or by the day that the sale is complete**. 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. Referendum Question.

The County will not allow the sale of the property unless the City of Franklin agrees to include the following advisory referendum question on the April 2018 ballot: "Shall the sale of Milwaukee County property or parkland to private developers for the Ballpark Commons project be allowable for Milwaukee County?"

17. Parks Improvements.

The Buyer shall commit to an annual contribution of \$25,000 for County park improvements for the term of the agreement.

18. Insurance Requirement.

The Buyer will secure all necessary property and liability insurance at the Buyer's expense, prior to closing. In the event that the methane gas monitoring system or landfill cap on the property is damaged during the term of the agreement, the Buyer will assume all liability for damages and the County will not be held liable for any future improvements after the closing of the property sale.

19. County Highway BB (Rawson Ave.) Expansion.

If an increase in traffic on County Highway BB necessitates an expansion to be constructed, the Buyer, and not the County nor the City of Franklin, shall assume all costs for such an expansion.

20. Definitions.

The term "revocable license" shall be included and defined under the "Definitions" section of the final agreement.

21. 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.

AMEND THE ATTACHED LEASE AGREEMENT TERM SHEET AS FOLLOWS:

Lease Agreement Term Sheet

The **Rock Sports Complex** **BPC County Land** LLC and Milwaukee County

1. **Premises** - County leases the Ski Hill that is within the Village of Greendale, a portion of taxkey # 6519988002 to The Rock Sports Complex LLC (the “Operator”).
2. **Use** – Consistent with County ordinances and other applicable laws, the Operator shall have the use of the Premises for the purposes of mountain biking, cross country and downhill skiing, outdoor haunted hikes, a zipline, and for no other purposes except recreational uses that may be approved by County, pursuant to County Board approval.
3. **Term** – **20 10 years with successive one 20 year extensions** so long as Operator’s affiliate, BPC County Land LLC, is under a continuing obligation to monitor, maintain and replace landfill infrastructure on the Ski Hill property as part of the operation of the adjacent landfill.
4. **Hours** - The Operator shall operate the Ski Hill on days and hours consistent with similar recreational sports parks at other similar locations in Wisconsin, subject to closure due to inclement weather. The hours of operation of the Ski Hill shall not allow any event to begin later than 9:00 pm on any night and all lighting shall be turned off pursuant to local ordinance. The County has the authority to adjust the hours of operation of County parks, including the Ski Hill, in the County’s sole discretion, and nothing in this Agreement is intended to limit or abrogate such authority.
5. **Noise and Light** - The Operator shall not use or permit the use of the Ski Hill in any manner that creates or maintains any noise, sound, or light in violation of the County’s or any noise or light ordinance of the City of Franklin and the Village of Greendale, as applicable to the Premises or the Operator. **If there are more than eight (8) individual noise and/or light complaints related to the City of Franklin property reported to the municipalities annually during the term of the agreement, the County would consider the Operator to be in violation of this lease agreement and could be subject to termination.**
6. **Continuous Operation** - The Operator agrees to cause the Ski Hill to be continuously operated as weather and seasons permit throughout the term.
7. **Public Rentals** - The Operator is permitted to implement a rental program allowing the public to rent certain areas in the Premises according to the Operator’s policies and pricing. **Compliance with Laws** - The Operator shall, at the Operator’s expense, promptly comply with all laws, rules, and regulations

made by any governmental authority having jurisdiction over the Operator's use of the Premises.

- 8. Improvements** - The Operator is committed to making improvements and renovations to the Premises during the Term. Such renovations and improvements shall be mutually agreed upon between the Parties prior to commencement of any renovations or improvements and will become the property of the County upon termination of the Agreement. Other than uninhabited structures ancillary to recreational uses (such as ski lifts or zipline poles), no structures may be installed on the Premises without the consent of the Milwaukee County Board.
- 9. Prior Approval** - Any renovations or improvements contemplated in the Lease to the Premises shall require prior written approval of the Wisconsin Department of Natural Resources if necessary, the County Parks Director, design and construction approvals from the Milwaukee County Division of Architecture and Engineering Services, and evidence the Operator has obtained the necessary funds in an amount not less than one hundred percent (100%) of the estimated cost of the proposed renovations or improvements before commencing any construction activities on the Premises.
- 10. Repair and Maintenance** - Throughout the Term of this Agreement, the Operator, at its sole cost and expense, shall take good care of the Premises, including, without limitation, all improvements now existing or hereafter erected thereon (including, without limitation, the Operator's improvements and all infrastructure, building systems, sidewalks and paved areas, exterior lighting, street fixtures, utility lines and facilities, drainage lines and facilities, and all other equipment and appurtenances used in the functioning of the Premises or any portion thereof), and shall keep the same in good order, condition and repair.
- 11. Stormwater** - Allowing pollutants to directly or indirectly enter the storm sewer system and the Root River is prohibited. The Operator shall take all measures necessary to prevent pollutants from entering watercourses and shall be responsible for the maintenance of any watercourses within the Premises.
- 12. TE Participation** - The Operator shall ~~require use reasonable efforts to cause its contractors to establish Targeted Enterprise (TE) participation goals, consistent with Milwaukee County TE goals of 2530% for construction and 4720% for professional services, for the planning, development and construction of improvements and to use good faith efforts to achieve those goals.~~
- 13. Indemnification** - The Operator agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, the County and its agents, officers and employees, from and against all loss or expense including costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of the Operator or its agents which may arise out of or are connected with the activities covered by this Agreement.

- 14. Insurance** - During the term of this Agreement, Operator will keep in full force and effect a policy of comprehensive general public liability insurance covering its liability and protecting Milwaukee County, its employees, agents, or officers, from any and all claims, and maintain a minimum of \$5,000,000 in coverage, or the industry-standard required amount.
- 15. 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 Lease Agreement and related documents have been executed by both parties. If approved by the County Board and Certifiers, final documents will be prepared.