



## Legislation Details (With Text)

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<b>File #:</b>	14-0174	<b>Version:</b>	1	<b>Name:</b>	2/3/14 Resolution to Exercise Right of First Refusal
<b>Type:</b>	Resolution	<b>Status:</b>		<b>Status:</b>	Defeated
<b>File created:</b>	2/3/2014	<b>In control:</b>		<b>In control:</b>	City Council
<b>On agenda:</b>	2/24/2014	<b>Final action:</b>		<b>Final action:</b>	2/24/2014
<b>Enactment date:</b>	2/24/2014	<b>Enactment #:</b>			

**Title:** Resolution to Approve Exercise of Right of First Refusal for Acquisition of 2500-2550 S. State Street, Appropriate Necessary Funds, and Direct the City Administrator to Notify and Confirm Edward Brothers Malloy of the Exercise of this Right (8 Votes Required)

Whereas, City Council approved an Industrial Facilities Exemption Certificate Agreement between the City of Ann Arbor and Edward Brothers Inc. (now Edwards Brothers Malloy, Inc. ("Edwards Brothers") (R-11-019) which included a provision granting to the City of Ann Arbor the Right of First Refusal to purchase the property;

Whereas, Edwards Brothers offered the property for sale and executed a Term Sheet for the sale of the property with the University of Michigan subject to the City's Right of First Refusal ("Offer");

Whereas, Edwards Brothers provided notice to the City on November 27, 2013 of the principal terms of the Term Sheet between Edwards Brothers Malloy, Inc. (as to 2500 S. State St.) and Edwards Property Management, LLC (as to 2550 S. State St.) and the University of Michigan for the purchase and sale of the property and the City has sixty business days after the date of receipt of notice of the Offer and its terms to accept the Offer;

Whereas, City Council directed the City Administrator and the City Attorney to gather appropriate information to be used by City Council to evaluate whether to exercise the City's Right of First Refusal and to explore options to make this financially feasible (R-14-012);

Whereas, In response to City Council's directive, the Administration and the City Attorney has completed all appropriate inquiries regarding the title, boundaries, environmental conditions and physical condition of the property and the buildings and structures thereon;

Whereas, The City of Ann Arbor, Michigan (the "City") is authorized, pursuant to Act No. 99 of the Michigan Public Acts of 1933, as amended ("Act 99"), to enter into contracts for the purchase of lands, property or equipment for public purposes, to be paid for in installments over a period of not to exceed 15 years or the useful life of the property acquired, whichever is less;

Whereas, The City Council has determined that it is necessary and appropriate to acquire from Edwards Brothers Malloy, Inc., a Michigan corporation (the "Seller"), a parcel of real property within the City, located at 2500-2550 S. State St., Ann Arbor, Michigan, and all buildings and other improvements thereon, including the cell tower installed on a portion of the real property (the "Project"), and intends to exercise of its right of first refusal to purchase the Project;

Whereas, The City Council has further determined that it is necessary and appropriate to enter into an installment purchase agreement to finance such acquisition pursuant to Act 99, at a cost (exclusive of interest) not to exceed \$13,000,000, to be financed on an installment purchase basis ("Financed Funds");

Whereas, The City has solicited requests for proposals from several financial institutions for the purchase of the Seller's rights under a 5-yr installment purchase agreement for an amount not to exceed \$13,000,000.00 to be prepayable at any time without penalty; and to receive an assignment

of the Seller's rights in said agreement;

Whereas, The City has received three proposals in response to its request for proposals and is currently evaluated these proposals and it is necessary and desirable to authorize the Chief Finance Officer and/or the City Treasurer (each an "Authorized Officer") to select the proposal deemed economically advantageous and in the best interest of the City;

Whereas, The useful life of the Project has been determined to exceed fifteen (15) years, and the aggregate outstanding balance, exclusive of interest, of all installment contracts or agreements for purchases by the City of lands, property or equipment for public purposes, including the purchase of the Project described, does not exceed 1.25% of the taxable value of the real and personal property in the City;

Whereas, A form of Installment Purchase Agreement (the "Agreement"), attached hereto as Exhibit A, for the Project has been presented to the City Council and is before this meeting, which may be utilized to provide for the installment purchase financing in the principal amount of up to \$13,000,000.00 over a period of not more than five (5) years, with interest accruing at a variable rate, and payable at such intervals as determined by the Authorized Officer, with all outstanding principal payable at the 5-yr maturity of the Agreement, subject to prepayment by the City in whole or in part at any time without premium or penalty; and

Whereas, The City Council adopts the following findings and approves the following actions:

#### RESOLUTIONS

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The exercise of its Right of First Refusal for Acquisition of 2500-2550 S. State Street and the acquisition of the Project is hereby approved City Council on the terms and conditions stated in a certain Term Sheet between Edwards Brothers Malloy, Inc. and Edwards Property Management, LLC and the University of Michigan ("Term Sheet") and the further provisions of this Resolution;

2. The terms and conditions of the Term Sheet require and Council approves a Lease between the City and Edward Brothers for their continued occupancy of 2500-2550 S. State Street for the period March 1, 2014 to December 31, 2014;

3. Funds are appropriated and a Project budget established for the acquisition of the Project in the amount of \$13,490,000.00 to cover the costs of acquisition, closing, and incidental costs to be available for expenditure without regard to fiscal year as follows:

Capital Projects Fund Revenue: Transfer from General Fund for closing and carrying costs - \$490,000.00 (2014 portion only). Note proceeds \$13,000,000.00.

Capital Projects Fund Expenditure: Purchase of property - \$13,000,000.00. Closing and carrying costs \$490,000.00.

General Debt Service Revenue: Transfer from the General Fund to debt service - \$200,000.00 (2014 portion only)

General Debt Service Expenditure: Interest payments on debt service - \$200,000.00 (2014 portion only)

General Fund Revenue: Use of Fund Balance for closing costs, carrying costs and interest payments - \$690,000.00 (2014 portion only)

General Fund Expenditure: Transfer out to Capital Projects/Debt Service Funds - \$690,000 (2014 portion only)

4. An Installment Purchase Agreement is deemed in the best interests of the City based on the

existence of an immediate need for the acquisition of the Project to meet the response time required under the terms of the City's Right of First Refusal and the acquisition and use of the Project constitute essential public purposes, including but not limited to the furtherance of the land use recommendations contained in the City's South State Street Corridor Plan.

5. The form of the Installment Purchase Agreement which is attached at Exhibit A and incorporated herein by reference is hereby approved in substantially the form submitted to this meeting, and the Mayor and the City Clerk are hereby authorized and directed to execute, acknowledge and deliver the Installment Purchase Agreement for the acquisition and funding of the Project with such changes therein as shall be necessary or desirable, permitted by law and not materially adverse to the City subject to the approval as to form by the City Attorney. The financial terms of the transaction, substantially in accordance with those described in the Recitals above and as set forth in the Installment Purchase Agreement, with such changes therein as shall be negotiated with the Bank by the Authorized Officer and not materially adverse to the City, are also approved.

6. The Project has a useful life extending beyond five (5) years, the term of the Agreement, and the aggregate principal amount of the Installment Purchase Agreement and of all outstanding installment purchase obligations of the City under Act 99 does not exceed 1.25% of the taxable value of the real and personal property in the City.

7. The City hereby agrees to include in its budget for each fiscal year during the term of the Agreement an amount sufficient to pay when due the principal of and interest coming due under the Installment Purchase Agreement during such fiscal year. In addition, the City hereby pledges to levy in each fiscal year ad valorem taxes on all taxable property in the City in an amount which, together with other funds available for such purpose, shall be sufficient for the payments required under the Installment Purchase Agreement in such fiscal year, provided that any such tax levy is subject to existing charter, statutory and constitutional tax limitations.

8. The Mayor, the City Clerk, the City Treasurer, the Chief Financial Officer and the City Administrator, severally, are authorized to act on behalf of the City in executing and delivering all agreements, lease, assignment, documents, certificates, instruments of title, financing statements and other documents as may be necessary to consummate the transactions contemplated by the Resolution, and to pay costs incidental to the financing of the acquisition of the Project, including bond counsel fees and expenses, Bank counsel fees and expenses, closing and carrying costs and other incidental costs necessary to accomplish the financing and acquisition of the Project.

9. The obligation of the City to make the payments required under the Installment Purchase Agreement is a full faith and credit general obligation of the City, subject to applicable constitutional, statutory and charter limitations.

10. This Resolution shall be effective immediately upon its adoption.

11. That the City Administrator is authorized and directed to implement this Resolution, including provision of written notice to Edward Brothers Malloy, Inc., no later than February 25, 2014, of the City's exercise of its Right of First Refusal, which notice shall include a certified copy of this Resolution

12. All resolutions and parts of resolutions, insofar as they conflict with the provisions of this resolution, are hereby rescinded.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Edward Bros ROFR Acquisition IPA Financing Res EB 20140224 DEFEATED, 2. Edward Bros ROFR Acquisition IPA Financing Res EB 20140224, 3. Memo to Council - EB due diligence, 4. Chart - Edwards Brothers

Date	Ver.	Action By	Action	Result
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2/24/2014	1	City Council	Approved	Fail
2/18/2014	1	City Council		
2/18/2014	1	City Council	Postponed	Pass
2/3/2014	1	City Council		
2/3/2014	1	City Council		
2/3/2014	1	City Council	Postponed	Pass
2/3/2014	1	City Council	Postponed	Pass

Resolution to Approve Exercise of Right of First Refusal for Acquisition of 2500-2550 S. State Street, Appropriate Necessary Funds, and Direct the City Administrator to Notify and Confirm Edward Brothers Malloy of the Exercise of this Right **(8 Votes Required)**

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