

County Council of Cuyahoga County, Ohio

Resolution No. R2012-0264

Sponsored by: **County Executive FitzGerald/Department of Public Works and Councilmembers Germana, Miller, Brady, Schron, Conwell, Connally, Simon, Jones, Rogers, Gallagher and Greenspan**

A Resolution making awards on RQ24534 to Geis Property Management, LLC for sale of the Ameritrust Complex and entry of a lease for a consolidated County headquarters at the site of the P & H Buildings; authorizing the County Executive to execute all documents in connection with said awards and consistent with this Resolution; authorizing the Director of Public Works to administer said project; and declaring the necessity that this Resolution become immediately effective.

WHEREAS, Cuyahoga County engaged the services of Allegro Realty Advisors (“Allegro”) to conduct an audit of the County’s real-estate needs and come forth with a set of recommendations for the County; and,

WHEREAS, Allegro’s recommendations included a recommendation for the County to consolidate multiple functions of County government into a consolidated headquarters; and,

WHEREAS, Allegro recommended that the County place 13 properties currently owned by the County for sale, including the Ameritrust Complex, which consists of seven parcels commonly known as the Rotunda, the Swetland, the Tower, the P Building, the H Building, the Ameritrust Garage, and the Oppman Garage; and,

WHEREAS, the County engaged the services of CBRE, Inc. (“CBRE”), a commercial real estate services firm, to serve as the real estate portfolio program manager, provide brokerage services, and represent the County in connection with the real estate portfolio program; and,

WHEREAS, the County required CBRE, and CBRE expressly agreed in its Contract with the County, to “[p]erform all services hereunder in a fiduciary, professional and efficient manner in accordance with the highest industry standards and practices applicable to the performance of such services”; and,

WHEREAS, the County also retained the services of URS Corporation to provide professional architectural and engineering services in connection with the real property consolidation project; and,

WHEREAS, CBRE worked with the County to prepare and issue a request for proposals, RFP24534, (the "RFP") for the real property consolidation project in accordance with the County's Contracting and Purchasing Procedures Ordinance; and,

WHEREAS, the RFP contains three initiatives: Initiative I sought proposals for the County Headquarters; Initiative II sought proposals for a storage facility; and Initiative III sought proposals for the disposition and sale of the County properties that Allegro recommended be placed for sale; and,

WHEREAS, Geis Companies LLC proposed to purchase, through its affiliate Geis Property Management, LLC ("Geis") either directly as the party or as a guarantor of a special purpose entity, the Ameritrust Complex for \$27,000,000.00, to lease an administrative headquarters to the County in a new 8-story building to be constructed on the site of the P&H buildings and having a minimum useable square footage of 220,342, and to provide the County with the option to purchase the administrative headquarters in 2040 at the end of the 26 year lease term at the cost of \$1 dollar; and,

WHEREAS, Geis plans to utilize financing through an Ohio port authority to finance the county administration headquarters, which may result in an assignment of the County's lease with Geis to a public entity; and,

WHEREAS, Geis proposed rent in an annual rent payment of \$5,774,220.00 for the first year, which increases annually by two percent, with the first year rent abated by \$4,007,100.00, meaning that the County would only pay \$1,767,120.00 for the first year, provided that it takes occupancy of the Building on July 15, 2014; and,

WHEREAS, because of the port financing and the issuance of bonds, Geis proposed that the annual rent of \$5,774,220.00 be divided into two components, each increasing 2 percent annually: an annual "Base Rent" of \$4,007,100.00 for debt service against which the County does not have the right of setoff and a "Service Rent" of \$1,767,120.00, against which the County has the right of setoff; and,

WHEREAS, the County will also be obligated to pay 50% of the annual ground rent payable under an underlying ground lease as ascertained and fixed pursuant to and in accordance with the arbitrators' decision in that certain lawsuit styled Timothy F. Hagan, et al. v. Cleveland Times Square Holdings at Six Points LLC, et al, Case No. CV-09-681954 filed in the Cuyahoga County Court of Common Pleas, less \$11,000.00 per year, and otherwise on the terms and conditions set forth in the County's lease. The County will not have any right of setoff against such amount; and,

WHEREAS, the County determined that it is more economical for it to directly assume the costs of utilities, tenant improvements above the allowance provided by the landlord, and insurance instead of having the landlord finance these costs and add them to the annual rent obligations;

WHEREAS, Geis committed to deliver the building for the County's immediate use on July 15, 2014, and to have the rent commencement date for the Base Rent to commence on July 15, 2015; and,

WHEREAS, Geis proposed to provide the County with certain rights to expand into the third floor of the Ameritrust Tower, the Rotunda, and three floors of the Swetland Building should the need for such expansion arise in the future; and,

WHEREAS, CBRE and URS analyzed the proposals received in response to the RFP as part of the County's evaluation team, which recommended that the County award Initiative I and the sale of the Ameritrust Complex under Initiative III to Geis; and,

WHEREAS, the proposals submitted by Geis for Initiatives I and III received the highest evaluations by the County's evaluation team; and,

WHEREAS, it is necessary that this Resolution become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County entity.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. That the Cuyahoga County Council hereby awards the sale of the Ameritrust Complex, consisting of the seven parcels commonly known as the Rotunda, the Swetland, the Tower, the P Building, the H Building, the Ameritrust Garage, and the Oppman Garage, pursuant to Initiative III of the RFP, to Geis for a purchase price of \$27,000,000.00.

SECTION 2. That the Cuyahoga County Council awards Initiative I of the RFP to Geis for the County to lease a new county headquarters to be constructed on the site of the P & H buildings in the Ameritrust Complex with the option to purchase at the end of the lease term in the year 2040 for \$1 dollar. The Base Rent commencing on July 15, 2015, shall be \$4,007,100.00, with annual increases of 2%; and the "Service Rent", which shall begin upon the County's taking occupancy of the building, shall be \$1,767,120.00, with annual 2% increases. The County will also be obligated to pay 50% of the annual ground rent payable under an underlying ground lease as ascertained and fixed pursuant to and in accordance with the arbitrators' decision in that certain lawsuit styled *Timothy F. Hagan, et al. v. Cleveland Times Square Holdings at Six Points LLC*, et al, Case No. CV-09-681954 filed in the Cuyahoga County Court of Common Pleas, less \$11,000.00 per year, and otherwise on the terms and conditions set forth in the County's Lease.

SECTION 3. All of the County's obligations under the Lease shall be subject to the County's annual appropriations.

SECTION 4. That the County Executive or his authorized designee is authorized to (a) take all actions, and to execute, acknowledge, deliver and/or file for record (as and where appropriate) (i) all documents and instruments necessary or desirable to facilitate and/or consummate the transactions contemplated hereby, convey and transfer acceptable title to the Ameritrust Complex, and facilitate the issuance of title insurance with respect thereto, including, but not limited to, a purchase and sale agreement and all documents to be executed by the County thereunder, a lease agreement and all documents to be executed by the County thereunder, and all financing-related documents (including but not limited to subordination, non-disturbance and attornment agreements, pledges, and security agreements), (ii) all other and further documents, instruments, certificates, agreements, amendments, assignments, subleases, consents, affidavits, certifications, disbursement authorizations, settlement statements, closing statements, proration statements, escrow agreements, escrow instructions, and notices, and (iii) amendments, modifications and supplements to any of the foregoing, that the County Executive may deem necessary or advisable in connection with the consummation of the transactions contemplated hereby, in all cases containing such terms and conditions as may be approved by the County's Director of Law, (b) agree to such payments, prorations, credits, deposits, holdbacks, escrows and other arrangements from (or relative to) sales proceeds as may be necessary or advisable in connection therewith to facilitate and/or consummate such transactions, and (c) prosecute and/or defend any actions or proceedings that may be necessary or advisable relative to any of the foregoing matters.

SECTION 5. That the Director of Public Works is authorized to administer the project through its milestones and be responsible for any ongoing approval rights under the Lease with Geis.

SECTION 6. That all documents to be executed in connection with this transaction be subject to the Law Director's approval as to legal form and correctness.

SECTION 7. It is necessary that this Resolution become immediately effective in order that critical services provided by Cuyahoga County can continue, and to continue the usual and daily operation of a County entity. Provided that this Resolution receives the affirmative vote of eight members of Council, this Resolution shall become immediately effective upon the signature of the County Executive.

SECTION 8. It is found and determined that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Mr. Schron, seconded by Mr. Jones, the foregoing Resolution was duly adopted.

Yeas: Gallagher, Schron, Conwell, Jones, Rogers, Simon, Greenspan, Miller, Brady, Germana and Connally

Nays: None


County Council President

1-22-13
Date


County Executive

1/24/13
Date


Clerk of Council

1/22/2013
Date

Legislation was accepted on the Floor for its anticipated placement on agenda:
December 11, 2012

First Reading/Referred to Committee: December 11, 2012

Committee(s) Assigned: Committee of the Whole

Committee Report/Second Reading/Referred to Committee: January 8, 2013

Committee(s) Assigned: Committee of the Whole

Additional Sponsorship Requested on the Floor: January 8, 2013

Additional Sponsorship Requested on the Floor: January 22, 2013

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