

Contract Routing Form

ROUTING: Routine

printed on: 06/11/2013

Contract between: Hawk's Addition, LLC.  
 and Dept. or Division: Engineering Division  
 Name/Phone Number:

Project: Development & Land Swap Agreement for Audubon Addition to Hawks Creek

Contract No.: 7142  
 Enactment No.: RES-13-00006  
 Dollar Amount: 0.00

File No.: 28396  
 Enactment Date: 01/09/2013

(Please DATE before routing)

Signatures Required	Date Received	Date Signed
City Clerk	6/11/13	6-11-13
Director of Civil Rights	6/11/13	6-19-13 <i>AWD</i>
Risk Manager	6-20-13	7/22/13 <i>KMS</i>
Finance Director	7-23-13	7-23-13 <i>Ru</i>
City Attorney	1053   7-23-13	7-29-13
Mayor	7-29-13	7-29-13

Please return signed Contracts to the City Clerk's Office  
 Room 103, City-County Building for filing.

Original + 1 Copies

06/11/2013 14:52:47 enjls - Janet Dailey, 261-9688

Dis Rights: OK (N/A) Problem - Hold  
 Prev Wage: AA / Agency / No  
 Contract Value: *see fiscal note*  
 AA Plan: *Exempt per REAL ESTATE*  
 Amendment / Addendum # *—*  
 Type: POS (Dvlp) / Sbdv / Gov't /  
 Grant / PW / Goal / Loan / Agrmt



Legislation Details (With Text)

**File #:** 28396      **Version:** 1      **Name:** Approving a Development and Land Swap Agreement for the Development of the Audubon Addition to Hawks Creek.

**Type:** Resolution      **Status:** Passed

**File created:** 11/16/2012      **In control:** BOARD OF PUBLIC WORKS

**On agenda:** 1/8/2013      **Final action:** 1/8/2013

**Enactment date:** 1/9/2013      **Enactment #:** RES-13-00006

**Title:** Approving a Development and Land Swap Agreement for the Development of the Audubon Addition to Hawks Creek. (1st AD)

**Sponsors:** Lisa Subeck

**Indexes:**

**Code sections:**

**Attachments:** 1. AudubonPlan 9-7-12.pdf, 2. parks display.pdf, 3. Plat display.pdf

Date	Ver.	Action By	Action	Result
1/8/2013	1	COMMON COUNCIL	Adopt	Pass
12/12/2012	1	BOARD OF PUBLIC WORKS	Return to Lead with the Recommendation for Approval	Pass
12/3/2012	1	BOARD OF ESTIMATES	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
11/28/2012	1	BOARD OF PUBLIC WORKS	Refer	Pass
11/27/2012	1	BOARD OF ESTIMATES	Referred	
11/27/2012	1	COMMON COUNCIL	Refer	Pass
11/27/2012	1	Engineering Division	Referred for Introduction	

**Fiscal Note**

There is no fiscal impact with the approval of the Development and Land Swap Agreement. The City will complete several public works projects, under separate resolutions and approvals in order to complete the work that is proposed for the development of the residential subdivision. Initial cost estimates for that work are as follows:

- Impact fee district for sanitary sewer \$250,000
- Construction of the public infrastructure to serve the plat \$850,000.00
- Subdivision platting and related design services \$25,000.00

The funds will be allocated with the respective projects. There is no schedule for the future extension of Jeffy Trail and that is considered outside the scope of this overall development project.

**Title**  
Approving a Development and Land Swap Agreement for the Development of the Audubon Addition to Hawks Creek. (1<sup>st</sup> AD)

**Body**  
PREAMBLE

The Madison Audubon Society, Inc. (the "Society") is the owner of an improved residential parcel containing

9.48 acres located at 7960 Raymond, (the "Property"). The Property fronts on Raymond Road, with Jeffy Trail and Trevor Way rights-of-way extending to the northern boundary of the Property.

The Property was acquired by the Society in September of 2011 as a gift after the owner passed away and is currently offered for sale by the Madison Audubon Society, Inc. The Society has accepted Purchase and Sale Agreement from the City of Madison (the "City") for the Property. The City Engineering Division and the Office of Real Estate Services has negotiated terms with the Society for the acquisition of the Property.

The acquisition of the Property would facilitate the expansion of the Ice Age Junction Trail, extension of Jeffy Trail, related infrastructure improvements, and the creation of public open space. The Property has been identified in the High Point - Raymond Neighborhood Development Plan. The proposed uses shown on the Plan range from low density residential development, park, drainage, and open space. The acquisition of the Property would satisfy these multiple uses.

A concurrent resolution will authorize the execution of a Purchase and Sale Agreement, the CUSA amendment, and petition to annex the property at 7960 Raymond Road. Subsequent resolutions for the Subdivision plat and other related contracts and agreements for the public works projects will be approved at a later date.

The owner of Lots 30-32 and Outlot 3 in the First Addition to Hawks Creek, Hawks Addition, LLC, is willing to enter into an agreement for a land swap and to jointly plat the subdivision, which will maximize the land usage and allow for the parcels to be reconfigured for a low density residential development. The City has approved a CSM for Outlot 3 that would preclude the development of the Audubon Society Property as desired but that CSM has not been recorded by the owner. This agreement would detail the rights and responsibilities of the City and Hawks Addition, LLC as necessary to jointly develop the property, including the basis for the land swap and the cost sharing that is required.

NOW, THEREFORE, BE IT RESOLVED, That the Mayor and City Clerk are hereby authorized and directed to execute a Development and Land Swap Agreement for the Development of the Audubon Addition to Hawks Creek, with Hawks Addition, LLC.

**DEVELOPMENT AND LAND SWAP AGREEMENT  
FOR THE DEVELOPMENT OF THE WOLFE ADDITION TO HAWKS CREEK**

This Development and Land Swap Agreement for the Development of the Wolfe Addition to Hawks Creek (the "Agreement") is between the City of Madison, Wisconsin (the "City") and Hawk's Addition, LLC ("Property Owner"), collectively the "Parties".

**A. PROPERTY AFFECTED**

**PROPERTY DESCRIPTION:**

This Agreement applies to the following properties ("Owner's Property"):

1. Lot 30, First Addition to Hawk's Creek 251/0608-031-1311-1
2. Lot 31, First Addition to Hawk's Creek 251/0608-031-1601-6
3. Outlot 3, Second Addition to Hawk's Creek 251/0608-031-1313-7

And the following properties ("City's Property"):

4. 7960 Raymond Road 062/0608-031-9830-3
5. 7960 Raymond Road 062/0608-022-9190-9
6. Outlot 5 Second Addition to Hawks Creek 251/0608-031-1403-6
7. Outlot 6 Second Addition to Hawks Creek 251/0608-031-1404-4

Exhibit A depicts the boundaries of the properties.

**B. PROJECT**

The Property Owner and the City shall jointly develop the Owner's Property and the City's Property with a subdivision plat (the "Plat"), which will maximize the land usage and allow for the parcels to be reconfigured for a low density residential development.

The City's Property is subject to detailed open space requirements. The subdivision shall include both private open space (tree preservation easement) and public open space (proposed Outlot 1 and Outlot 2 of the Wolfe Addition to Hawks Creek Subdivision), substantially similar to what is shown on the attached Exhibit B. Permitted uses in the public open space shall include storm water drainage, storm water retention and/or detention to serve the lots contained within the subdivision, storm sewer, sanitary sewer and water main facilities, sidewalks and/or ped/bike paths and trails, other recreational uses, and any required grading or sloping activities necessary to construct the sidewalks, bike paths, and adjacent roadways. Grading for the proposed lots to facilitate development of those lots shall not be permitted in the public or private open space. The City is responsible for insuring that the Plat satisfies the open space requirements applicable to the City's Property.

Under the requirement applicable to the City's Property:

- Public open space shall exceed 3.0 Acres.
- Public open space plus private open space shall exceed 5 Acres.

C. **AGREEMENT**

This Agreement details the rights and responsibilities of the City and The Property Owner as necessary to jointly develop the Owner's Property and the City Property, including the basis for the land swap and the cost sharing that is required.

1. **VACATING JEFFY TRAIL ADJACENT TO OUTLOT 3 SECOND ADDITION TO HAWK'S CREEK:** The Property Owner shall support the vacation of a portion of the Jeffy Trail right of way adjacent to Outlot 3 of the Second Addition to Hawks Creek. The portion of the right of way to be vacated shall be detailed on the final Plat.

2. **LANDS TO BE PLATTED:** The Property Owner and the City shall replat the property consisting of the following parcels:

Lot 30, First Addition to Hawks Creek	251/0608-031-1311-1
Lot 31, First Addition to Hawk's Creek	251/0608-031-1601-6
Outlot 3, Second Addition to Hawks Creek	251/0608-031-1313-7
7960 Raymond Road	062/0608-031-9830-3
7960 Raymond Road	062/0608-022-9190-9

The City may include the following parcels in the plat as determined solely by the City if those lands are owned by the City or the Property Owner.

Outlot 5 Second Addition to Hawks Creek	251/0608-031-1403-6
Outlot 6 Second Addition to Hawks Creek	251/0608-031-1404-4
Portions of vacated Jeffy Trail right of way adjacent to Outlot 3 of the Second Addition to Hawks Creek	

3. **THE PLAT:** The Plat will create a minimum of sixteen (16) residential lots, with a minimum of seven (7) consisting of lots 1-6 and lot 16 on Exhibit B belonging to the Property Owner and a minimum of nine (9) consisting of lots 7-15 belonging to the City. The number of lots may increase as jointly agreed to by the Property Owner and the City if approved in the subdivision platting and approval process. The Project shall also include the dedication of a public street (Trevor Way cul de sac), public utility easements, public path and / or sidewalk easement(s), public stormwater management and / or drainage easements, public open space, street dedication for the future extension of Jeffy Trail, and street dedication for improvements along Raymond Road.

The Plat shall be substantially as shown in Exhibit B unless otherwise agreed to in writing. No material changes or modifications to the Plat may be made without the Property Owner's written consent.

4. **OWNERSHIP OF SINGLE FAMILY RESIDENTIAL LOTS AFTER PLATTING:** The City and the Property Owner shall exchange deeds necessary to confirm ownership of the seven lots in the Property owner and nine lots in the City.

5. **OWNERSHIP OF OPEN SPACE LANDS AND STORM WATER MANAGEMENT LANDS AFTER PLATTING:** The Plat shall dedicate to the City and the City shall own through dedication all property in the Plat other than certain single family lots described in paragraph C(4) above.

6. **DEDICATION OF STREET RIGHT OF WAYS AND PUBLIC EASEMENTS FOR PEDESTRIAN AND BICYCLE PATHS:** The Plat shall dedicate the right of way for Trevor Way, Jeffy Trail and easements for pedestrian and bike paths. One of the required public easements is for a pedestrian sidewalk to connect Trevor Way to Jeffy Trail and this easement shall be between lots that will be owned by the Property Owner, as depicted on Exhibit B.

7. **DEDICATION OF PUBLIC EASEMENTS FOR SANITARY SEWERS AND WATER MAIN:** Sanitary sewer and water main easements shall be dedicated by the Plat to serve lots in the First Addition to Hawk's Creek, the Second Addition to Hawk's Creek and the Wolfe Addition to Hawk's Creek. One of the locations for the public sanitary sewer and public water main easements shall be between lots that are owned by the Property Owner, as depicted on Exhibit B.

8. **DEDICATION OF PUBLIC STORM SEWER AND PUBLIC STORMWATER DRAINAGE EASEMENTS:** Various storm sewer and drainage easements shall be dedicated by the Plat in the locations shown on Exhibit B. The public stormwater and public storm sewer drainage easements will accommodate the overland flow of stormwater from Trevor Way and will be used for the construction of subsurface improvements and shall be located between lots owned by the Property Owner, as shown on Exhibit B.

9. **CONSTRUCTION OF PUBLIC IMPROVEMENTS:** The City will be solely responsible for the design and construction of the necessary public works improvements to allow for the development of the Owner's Property and the City's Property. These public works improvements include, but are not limited to earth work and grading, installation of base course, street, curb and gutter, sidewalk, water main, water service laterals, sanitary main, sanitary sewer laterals, storm sewer main and structures, stormwater management facilities, pedestrian sidewalk or paths adjacent to the properties, bituminous pavement, seeding and restoration, landscaping, street lighting, street signage and pavement marking. The Property Owner shall waive its right to hearing and notice of the public works improvements and assessments and shall consent to be assessed for their proportionate share of said improvements so long as such assessment is in accordance with this Agreement. The City will provide copies of all accepted bids and all documents evidencing costs associated with the development to Property Owner and will provide the Property Owner with prompt notice of the acceptance and announcement of all bids.

10. **SANITARY SEWER IMPACT FEE DISTRICT:** In order to serve the Properties with sanitary sewer the City shall establish a sanitary sewer impact fee district to construct the sanitary sewer to the right of way of Trevor Way. This impact fee district will be approved and constructed outside the scope of this Agreement and the related public works improvements as detailed herein. The impact fees resulting from the sanitary sewer installation will be charged to any lots receiving benefits and will be collected at the time a building permit is issued for lots within the impact fee district.

11. **RIGHT TO ENTER LANDS FOR CONSTRUCTION AND COLLECTION OF DATA:** The City, its representatives, or designee shall have the right to access the Owner's Property to perform design, survey work, or field investigations necessary for the design of the subdivision plat. This agreement grants the City a temporary construction access easement across the Owner's Property for the purposes described above and for the construction of the public works improvements described in this Agreement.

12. **DEVELOPMENT COST:** The Property Owner and the City will share the costs to develop the residential lots in the subdivision. The Property Owner acknowledges that all of the cost of the improvements as detailed in Paragraph C(9), including all costs for design, platting and zoning approvals, development costs (excluding Impact Fees and Madison Metropolitan Sewerage District Fees), construction of public works improvements, inspection, testing of materials, use or equipment or materials provided by the City, or other costs that are directly attributable to the Project incurred by the City as part of the approval and construction process shall be assessed to the lots in the Plat. The costs for design, platting, and construction as detailed above shall be assessed in proportion to the developable lot areas (lot area less the area designated as tree preservation easement or rear yard setback) as shown on the final Plat, plus a comparable portion of existing Lot 32, First Addition to Hawk's Creek.

The City alone shall pay for the full cost to demolish the existing residence located on the City's Property, including the utility abandonments if the City decides to demolish the building, and no part of such costs shall be assessed to the lots. The Property Owner and the City shall each be responsible for the cost of retaining walls they wish to install on their properties separately and outside of the public works contract.

The fees for Madison Metropolitan Sewerage District shall be paid by the square footage according to the final platted lot areas. Each lot and respective lot owner shall be responsible to pay any outstanding Madison Metropolitan Sewerage District fees associated with their property. The Madison Metropolitan Sewerage District Fees shall be paid as a requirement of the subdivision plat recording.

The Property Owner acknowledges that there will be Impact Fees related to the proposed development that will not be included with this Agreement. Impact Fees will be collected in accordance with the State Statutes and the Madison General Ordinances.

13. **EFFECTIVE DATE:** The "Effective Date" shall be the later of the execution of the Agreement by the Property Owner or the City. The Agreement must be in place prior to the City recording the subdivision plat and prior to the City advertising the public works construction contract.

14. **LIABILITY:** Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions, including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, commissions, committees, agencies,

and representatives. It is not the intent of the parties to waive any statutory protections or impose liability beyond that imposed by state statutes.

15. **INSURANCE:** Each Party will maintain commercially appropriate insurance commensurate with the Party's responsibilities under this Agreement and provide adequate proof of such insurance upon request.

16. **TERMINATION:** If the Plat in substantially the form on Exhibit B or as otherwise approved in writing by both Parties is not recorded by August 1, 2013, either Party may elect to terminate the Agreement with 15 days written notice to the other Party. Nothing in this Agreement shall preclude the Property Owner from completing the proposed CSM as originally approved if this Agreement is terminated.

If the Property Owner's assessments for development costs and impact fees related to the project will exceed \$384,841.73, the Property Owner may elect to terminate the Agreement by written notice to the City within ten (10) days of receipt of the preliminary assessment amount from the City. If the Property Owner fails to provide written notice to the City within ten (10) days of the City providing the preliminary assessment amount, this termination provision shall be null and void. The final assessment to the Property Owner shall not exceed the preliminary amount provided by the City. If the final assessment is less than the preliminary assessment, any refund relating to amounts previously paid shall be refunded to the Property Owner for any lots that were sold prior to the levy of the final assessments.

Upon successful platting, construction, and levying of the final assessment of the public works improvements this agreement shall automatically terminate.

17. **SEVERABILITY:** If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

18. **BINDING EFFECT:** The conditions contained in this Agreement shall apply to and bind the Parties and their heirs, legal representatives, successors and assigns.

19. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only in writing and must be signed by the Property Owner and the City.

20. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

21. **WAIVER:** The failure of any Party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.



22. **RUN WITH THE LAND:** All the terms, conditions, covenants and other provisions contained in this Agreement, including the benefits and burdens, shall run with the Owner's Property and City's Property and shall be binding upon and inure to the benefit of and be enforceable by the Property Owner and the City and their respective successors and assigns.

23. **NONDISCRIMINATION:** In the performance of the services under this Agreement the Property Owner agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. The Property Owner further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex or national origin.

24. **NOTIFICATIONS:** All notices to be given under the terms of this agreement shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the Parties specified below:

For the City:

City Engineering Division  
Attn: Robert F. Phillips  
210 Martin Luther King Jr. Blvd  
Room 115  
Madison, WI 53703

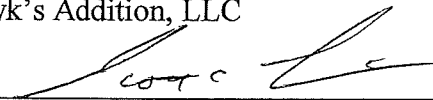
For the Property Owner:  
Hawk's Addition, LLC  
Attn: Scott C. Lewis  
121 S. Pinckney Street, Suite 200  
Madison, WI 53703

Any Party hereto may, by giving file (5) days written notice to the other Party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

[Signatures on next pages]

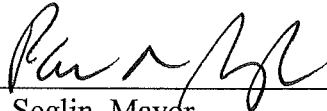
**PROPERTY OWNER:**

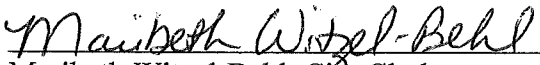
Hawk's Addition, LLC

By:  6/5/13  
Signature Date

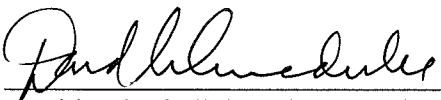
Scott C. Lewis sole Member  
(print name and title of person signing)


**CITY:**

  
Paul R. Soglin, Mayor

  
Maribeth Witzel-Behl, City Clerk

**Countersigned:**

  
David Schmiedicke, Finance Director  
Date: 7/27/13

Approved as to Form  
  
Michael P. May, City Attorney