

COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN

Presented February 11, 2016

Referred To _____

Reported Back _____

Adopted _____

Placed on File _____

Moved By _____

Seconded By _____

Yeas _____ Nays _____ Absent _____

Rules Suspended _____

Resolution No. 4172

Approving and granting the sale from the Community Development Authority to the City of Madison, by Warranty Deed, of two vacant lots located in the Mosaic Ridge Plat for the installation of a new neighborhood park by the City Parks Division, located at 2348 and 2370 Revival Ridge.

WHEREAS, the Community Development Authority (the "CDA") is the owner of a residential subdivision located on the City of Madison's southwest side called Mosaic Ridge Plat; and

WHEREAS, said Plat includes two vacant lots located at 2348 and 2370 Revival Ridge (the "Properties") containing a total of 1.1 acres as further described on the attached Exhibit A, that were being held for future development of owner occupied housing; and

WHEREAS, both a changing residential market and the demand for a neighborhood park resulted in the proposed sale of the Properties to the City for a neighborhood park; and

WHEREAS, the City Parks Division and the Office of Real Estate Services ~~has~~ had an appraisal done of the Properties in order to determine a purchase price, and the CDA has accepted the appraised value for the Properties; and

NOW, THEREFORE BE IT RESOLVED that the CDA hereby authorizes the execution of a Purchase and Sale Agreement (the "Agreement") for the~~approves the~~ conveyance by WarrantyQuit Claim Deed to the City of Madison of two vacant lots located in the Mosaic Ridge Plat for the installation of a new neighborhood park by the City Parks Division, located at 2348 and 2370 Revival Ridge, as legally described below and shown on the attached exhibit, on the following terms and conditions:

1. Properties. CDA hereby agrees to convey to City the Properties and all appurtenances, upon the terms and conditions set forth herein.
2. Purchase Price. The purchase price for the Property is Three Hundred Fifty Thousand Dollars (\$350,000) ("Purchase Price") and shall be paid as follows: City shall pay Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000) in cash or a cash equivalent at closing, subject to closing prorations and credits. The parties acknowledge and agree that the Purchase Price was established by an appraisal commissioned by CDA and City and accepted by CDA dated June 23, 2015 [a] establishing this value as the fair market value for the Property.
3. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the City or the CDA as indicated on the signature page ~~of either the date of acceptance of the authorizing~~

~~resolution by the City, or the authorizing CDA resolution.~~

4. Personal Property. CDA acknowledges and agrees that no personal property will be conveyed in this transaction from the CDA to the City.
5. CDA's Representations and Warranties. CDA hereby makes the following representations and warranties in connection with City's purchase of the Property, and no others, express or implied, which representations and warranties shall be true as of the closing date hereof and shall survive the closing of this transaction for a period of one (1) year:
 - a. CDA has the authority necessary to enter into this Offer and comply with CDA's obligations hereunder;
 - b. There are no pending or, to CDA's knowledge, threatened condemnation or eminent domain proceedings which would affect the Property;
 - c. There are no agreements between CDA and any other party which relate to the Property that have not been disclosed by to City;
 - d. Until the closing date, the Property will be maintained in substantially the same condition as it is in on the date of this Offer, subject to ordinary wear and tear and casualty damage; and
 - e. There is no litigation pending or, to CDA's knowledge, threatened which would affect the Property or the use thereof by City.
6. Title Contingency. Promptly after the Effective Date, CDA shall deliver or cause to be delivered to City, at the CDA's expense, a current commitment (the "Commitment") for an ALTA owner's title insurance policy for the Property in the amount of the total purchase price issued by a title agent selected by CDA using a nationally recognized title insurance underwriter ("Title Company"), together with a gap endorsement and copies of the instruments listed in the schedule of exceptions in such Commitment. City shall have ten (10) days after receipt of the Commitment to deliver to CDA in writing any objection to a matter shown on the Commitment which materially affects the Property or City's use of the Property ("Title Objections"). If CDA fails to deliver timely notice of Title Objections to City, City shall be deemed to have fully accepted the Commitment and all matters disclosed therein. If City timely delivers Title Objections, CDA shall have five (5) days after receipt of City's objection notice to notify City in writing what, if anything, CDA shall do to cure the Title Objections. Failure of CDA to respond within said period shall indicate that CDA elects not to cure the Title Objections. CDA shall have no obligation to cure any Title Objection or incur any expense with respect thereto. If CDA elects not to cure one or more of the Title Objections, City shall have five (5) business days to deliver notice to CDA terminating this Offer and the parties shall have no further obligations hereunder except those provisions that expressly survive. If CDA pursues a cure and is unable to cure a Title Objection by the closing date, then City shall have the option to either terminate this Offer and the parties shall have no further obligations hereunder except those provisions that expressly survive or close on the purchase of the Property with no Purchase Price reduction, in which case City is deemed to have accepted any uncured Title Objections and waived any rights against CDA relating thereto.

Notwithstanding anything to the contrary herein, the following matters shall be deemed “Permitted Exceptions” and City shall have no right to object to any of said matters on the Commitment:

- a. municipal and zoning ordinances and agreements entered under them, building and use restrictions and covenants, and State and/or Federal statutes and regulations;
- b. recorded easements for the distribution of utility and municipal services;
- c. property taxes and special assessments levied in the year of closing and subsequent years;
- d. such other matters as disclosed by the Commitment and waived or deemed waived by Buyer pursuant to this Section [56](#).

At closing, CDA shall cause the Title Company to issue a current ALTA owner’s title insurance policy in the amount of the Purchase Price of the Property insuring City as the fee simple owner of the Property as of the date of recording the deed, subject to the Permitted Exceptions (“Title Policy”).

7. Inspection Contingency. Promptly after the Effective Date, CDA shall make available to City any and all environmental studies, permits, applications, remediation plans or assessments of the Property in CDA’s possession or control for the Property. City, at its sole expense, may obtain an inspection of the Property and related improvements located on the Property and/or a Phase I environmental assessment of the Property. City shall not have the right to conduct any sampling of the water, soil, air or improvements without CDA’s express prior written consent [as described in Section 13](#). City shall have ten (10) days from the Effective Date, [unless extended by written agreement of the parties](#), to terminate this Offer by written notice to CDA resulting from City’s objection to any matter shown in an inspection report or Phase I environmental assessment, which materially affects the Property or any improvements located thereon or City’s use of the Property. If City does not terminate this Offer hereunder, then City is deemed to have waived this inspection contingency and any right to object to the condition of the Property or any improvements located thereon. In no event shall CDA be required to cure any matter to which the City objects relating to the condition of the Property or any improvements located thereon.

8. No Representations or Warranties; AS-IS Condition.

- a. City is hereby purchasing the Property in “AS-IS, WHERE-IS” condition and “with all faults”, and agrees that it relies upon no warranties, representations or statements by CDA, or any other persons for CDA, in entering into this Offer or in closing the transaction described herein, except for the express representations and warranties set forth in Section [54](#) above. City’s closing on the acquisition of the Property shall constitute conclusive evidence that City is satisfied with the condition of and title to the Property and has waived or satisfied City’s title and inspection contingencies set forth in Sections [56](#) and [67](#) above. In closing and completing this transaction, City will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of CDA or its agents or employees except those expressly set forth in Section 4 above.

- b. Except for the express representations and warranties set forth in Section 45 above, CDA makes no warranties, representations or statements whatsoever, express or implied, concerning or relating to the Property, including without limitation: the income or expenses of the Property; zoning and building codes and other similar restrictions; availability or cost of utilities; the environmental condition of the Property; the presence or absence of any hazardous substances, hazardous materials, petroleum, or any substances regulated by federal, state or local law in, on or under the Property; compliance of the Property with any law, regulation, ordinance or similar requirement, including without limitation the Americans with Disabilities Act; or the physical condition of the Property or any improvements thereon. City acknowledges that no agents, employees, brokers or other persons are authorized to make any representations or warranties for CDA.
- c. City (and any party claiming through or under City) hereby agrees that following the closing, CDA shall be fully and finally released from any and all claims or liabilities against the CDA relating to or arising on account of the condition of or title to the Property, including without limitation, any matters specifically referenced in this Offer.
- d. Section 78(a) through (c) shall survive the closing of this Offer.

9. Closing.

- a. The closing of this transaction shall take place after expiration of all City's contingencies set forth in this Offer but no later than April 31, 2016, at the offices of Title Company, or at such other time and place as may be agreed upon by City and CDA.
- b. Unless other contingencies are expressly granted in this Offer, City's contingencies include only the title and inspection contingencies set forth in Sections 65 and 67 ~~above and in Section 11 below.~~
- c. At closing, City shall deliver to Title Company wired funds or other immediately available funds in the amount of the Purchase Price, as adjusted for any prorations and closing costs provided for herein, and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Property is located or otherwise required by Title Company to issue Title Policy.
- d. At closing, CDA shall deliver to Title Company a Quit Claim~~Warranty~~ Deed conveying the Property to City, subject only to the exceptions permitted herein and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Property is located or otherwise required by Title Company to issue Title Policy.
- e. All prorations required hereunder shall be computed as of the date of closing.
- f. Possession of the Property shall be delivered to City on the closing date.
- g. City shall pay for recording the deed.

- h. CDA shall pay the title insurance premium for Title Policy to be issued to City and gap endorsement charges and for recording/filing fees for such documents as are required to be recorded / filed in order to cause title to the Property to be in the condition called for by this Offer.
 - i. All Title Company closing charges shall be shared equally by CDA and City.
 - j. All other closing costs, including without limitation transfer taxes and other recording fees, shall be allocated as customary in the state in which the Property is located.
10. Taxes. All general real property taxes payable with respect to the Property for the year of closing shall be prorated between City and CDA as of the closing date. If the precise amount of taxes payable for the year of closing cannot be ascertained, proration shall be computed on the basis of taxes on the Property for the immediately preceding tax year.
11. Special Assessments. Any and all special assessments, area assessments, connection charges, interceptor charges or any other charges due and payable to any municipality or utility with regard to the Property as of the date of closing shall be paid by CDA at closing.

~~12. City Contingencies. The City shall have thirty (30) days from the Effective Date (the "City's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate the Agreement, unless extended as provided herein:~~

~~a. Environmental/Soils Testing. The City obtaining, at its sole cost and expense, a phase 1 and/or phase 2 environmental assessments of the Property that are satisfactory, in the City's sole discretion, to the City.~~

~~b. Soil Borings. The City obtaining, at its sole cost and expense, soil borings that are satisfactory, in the City's sole discretions, to the City.~~

~~The City's Contingency Period may be extended for an additional thirty (30) days by written agreement of the parties prior to expiration of the original City's Contingency Period.~~

~~13.12. Condemnation. If the Property is condemned under the power of eminent domain, is the subject of a threatened condemnation, or is conveyed to a condemning authority in lieu of condemnation, CDA shall notify City in writing of the threat, condemnation or conveyance within three (3) business days of its occurrence. City shall within ten (10) days of the notice have the option of (a) proceeding with the closing and receiving the award or condemnation payment (or an assignment thereof, if the same is not received by closing), or (b) canceling this Offer.~~

~~14.13. Access to Property. Prior to closing, the City and the City's authorized agents and contractors shall be permitted access to the Property for the purpose of 1) conducting a Phase 1 and/or 2 environmental assessments of the Property and 2) soil borings including limited tree removal to access boring sites; at reasonable times with at least twenty-four (24) hours written notice to the CDA.~~

~~15.14.~~ Default. If City defaults in the full and timely performance of any of its obligations hereunder, CDA shall be entitled to terminate this Offer. If CDA defaults in the full and timely performance of any of its obligations hereunder, City, as its only remedies, may elect to either terminate this Offer or seek specific performance.

~~16.15.~~ Real Estate Commissions. CDA hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction. CDA hereby agrees to defend, indemnify and hold City harmless from any and all loss, cost or expense from any claim for real estate commission made by any agent, broker or firm engaged by CDA in connection with the Property or this transaction. City hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction.

~~17.16.~~ Assignment. Neither party may assign their rights to this Offer without the prior written consent of the other party.

~~BE IT STILL FURTHER RESOLVED, that the 2015 Parks Division Capital Budget Project #4 Parkland Acquisition (Project _____) be amended to include \$357,000 in new expenditure authority funded from the City-wide Parkland Acquisition Fund. The acquisition costs include the following: \$350,000 for the Purchase Price, and \$7,000 for miscellaneous closing costs and other associated acquisition costs including the City's portion of pro-rated real estate taxes, recording and settlement fees.~~

BE IT FURTHER RESOLVED that the CDA is authorized to execute, deliver, accept and record any and all documents and take such actions as shall be necessary or desirable to accomplish the purpose of this resolution in a form approved by the City Attorney.

Legal Description

Lots 1 and 2, Mosaic Ridge, City of Madison, Dane County, Wisconsin