



Legislation Text

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Fiscal Note

The proposed resolution authorizes the execution of a Purchase and Sale Agreement (PSA) between the City of Madison and the owner of the property located at 1904 Wheeler Road for the expansion of the Cherokee Marsh Conservation Park for a total estimated cost of \$2,360,000. The resolution also amends the Parks Division 2018 Capital Budget by appropriating \$2,360,000 in Citywide Parkland Impact Fees to the Cherokee Marsh Conservation Park project. The anticipated cash balance of the Citywide Parkland Impact Fee account at the end of 2017 is \$11,850,000 which is sufficient to cover this appropriation and the \$9,000,000 currently appropriated to the Land Acquisition project for a downtown park and other potential expansions to other parks in the system.

Title

SUBSTITUTE - Amending the 2018 Adopted Parks Division Capital Budget and Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and the owner of the property located at 1904 Wheeler Road for the expansion of the Cherokee Marsh Conservation Park.

Body

WHEREAS, Cherokee Park Inc., a Wisconsin corporation, or a successor in interest including but not limited to: Cherokee Property Development, LLC, (the "Seller") is the owner of the property located at 1904 Wheeler Road in the City of Madison, Dane County, Wisconsin; and

WHEREAS, the Seller desires to convey a portion of the property located at 1904 Wheeler Road, estimated at 31.227 acres, to the City of Madison (the "Buyer"), as legally described on attached Exhibit A and depicted as Parcel B on attached Exhibit B (the "Property"); and

WHEREAS, the City Parks Division ("City Parks") identified the Property as a viable site for expansion of the adjacent Cherokee Marsh Conservation Park and desires to purchase the Property; and

WHEREAS, the purchase price contemplated in the Purchase and Sales Agreement (the "Agreement") is based upon a unit value for the land, as determined by an appraisal obtained by the Natural Heritage Land Trust, which was reviewed and approved by the City of Madison Office of Real Estate Services; and

WHEREAS, the Buyer and Seller (the "Parties") have agreed to the terms of the Agreement and the Seller has signed said Agreement.

NOW, THEREFORE BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the Mayor and City Clerk to execute a Purchase and Sale Agreement (the "Agreement") to purchase an estimated 31.227 acres from the Seller (the "Property") for the expansion of Cherokee Marsh Conservation Park, as legally described on attached Exhibit A and depicted as Parcel B on attached Exhibit B, subject to the following terms and conditions:

1. The Property. The Buyer shall purchase and the Seller shall sell and convey by Warranty Deed (the "Deed") fee simple title to a portion of the real property located at 1904 Wheeler Road, located in the City of Madison, Dane County, Wisconsin, as legally described on attached Exhibit A and depicted on attached Exhibit B (the "Property"), including all rights, easements and appurtenances pertaining thereto and all improvements, trees, bushes, landscaping, foliage, and, to the extent such rights exist, all mineral, oil, gas, hydrocarbon substances, development rights, air rights, water rights, and water stock

thereon.

2. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Parties, as indicated on the signature page.
3. Purchase Price. The total purchase price of the Seller's interest in the Property (the "Purchase Price") shall be Two Million Three Hundred Forty-Two Hundred Twenty-Five Dollars and 00/100 (\$2,342,025.00). The Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations provided herein.
4. Personal Property. The transaction contemplated by this Agreement does not include any personal property.
5. Delivery of Documents. Within ten (10) days of the Effective Date, the Seller will reproduce at the Seller's expense and send to the Buyer all environmental studies, reports, surveys, permits, applications, building inspections, and remediation plans or assessments of the Property and all studies, reports, plans or assessments related to the condition of the Property in the Seller's possession or control.
6. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided in the Agreement, the Buyer shall purchase the Property in "AS-IS, WHERE-IS" condition and "with all faults," and shall agree that it relied upon no warranties, representations or statements by the Seller, its agents or employees, in entering into the Agreement or in closing the transaction described herein. Except as provided in Section 9 below, the Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property.
7. Due Diligence Period. The Buyer shall have sixty (60) days from the Effective Date (the "Due Diligence Period") to review, test and inspect all aspects of the Property, at its sole cost and expense. If within the Due Diligence Period the Buyer determines, in its sole discretion, that it does not desire to purchase the Property, the Buyer may provide written notice to the Seller of such desire and the Agreement shall terminate immediately.

If the Buyer does not provide written notice terminating the Agreement on or prior to the sixtieth (60th) day of the Due Diligence Period, the Agreement shall remain in full force and effect, the Buyer shall accept the Property as-is, and the parties shall proceed to close the transaction as provided herein.

Should the Buyer desire to close prior to the end of the Due Diligence Period, the Buyer may provide the Seller with written notice of its intent to do so. The provision of such notice by the Buyer shall not affect the terms contemplated in the Agreement, except that the Closing Date shall occur on or before fifteen (15) days from the date the Seller receives such notice, unless the parties agree in writing to another date.

The Due Diligence Period may be extended upon written agreement of the Parties.

8. Access to the Property. The Buyer and the Buyer's authorized agents and contractors shall be permitted access to the Property for the purpose of conducting a Phase 1 or 2 environmental assessment of the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer will repair, at the Buyer's sole cost and expense, all damages caused by any of its assessments and inspections so that the condition of the Property is returned to as good or better condition as existed prior to the assessment(s) and inspections.
9. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days

prior to Closing a commitment from First American Title Insurance Company (the "Title Company") to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Property, as of a date no more than fifteen (15) days before such title proof is provided to the Buyer, to be in the condition called for in the Agreement, and further subject only to liens which will be paid out of the proceeds of the Closing and to any exceptions acceptable to the Buyer ("Permitted Exceptions"). The Buyer shall notify the Seller of any valid objection to title, in writing, prior to Closing. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to carry out the Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, the Agreement shall be void.

10. Survey.

- a. ALTA/ACSM. Any survey of the Property including, but not limited to, an ALTA/ACSM Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2016 that is required to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of the Buyer and the title company providing the title insurance described in Paragraph 10 shall be at the sole cost and expense of the Buyer.
- b. Survey Map. The Parties shall coordinate the preparation of survey creating a legal land division of that portion of the real property located at 1904 Wheeler Road, for the conveyance of the Property. If a Certified Survey Map ("CSM") is required to create the legal boundaries of the Property, the Parties shall coordinate for the approval of the CSM by the City, with the CSM being recorded with the Dane County Register of Deeds prior to closing.

11. Commissions. The Seller represents that it has not entered into any contracts with any brokers or finders nor has the Seller obligated itself to pay any real estate commissions or finders' fees on account of the execution of the Agreement or the close of the transaction contemplated therein. The Buyer represents that it has not entered into any contracts with any brokers or finders nor has the Buyer obligated itself to pay any real estate commissions or finders' fees on account of the execution of the Agreement or the close of the transaction contemplated therein. The provisions of this Paragraph 11 shall survive any expiration or termination of the Agreement and shall not merge into any deed delivered and accepted upon the closing of the transaction therein contemplated.

12. Closing.

- a. Closing shall occur on or before fifteen (15) days from (a) the expiration of the Due Diligence Period; or (b) the date of the Seller's receipt of notice from the Buyer requesting an earlier Closing Date; or (c) such other date agreed to in writing by the parties.
- b. The Seller agrees to execute and deliver to the Buyer at closing the Deed conveying the Property to the Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and agreements entered under them; recorded easements for the distribution of utility, municipal services; easements; recorded building and use restrictions and covenants.
- c. The Buyer shall pay all recording/filing fees except that the Seller shall pay the 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 the Agreement.
- d. All real estate taxes with respect to the Property shall be prorated between the Buyer and the Seller as of the date of closing based upon the latest known assessment and latest known mil rate.

- e. The Seller shall be responsible for any existing special assessments or any other charges payable to any municipality or utility with regard to the Property as of the date of closing.
 - f. The Seller shall pay any fees related to the Wisconsin Real Estate Transfer fee and the preparation of the Transfer Return by the Title Company due in connection with conveyance of the Property.
13. Representations. The Seller represents the following:
- a) No Prior Right to Purchase. No party has any option, right of first refusal or similar right to purchase all or any portion of the Property.
 - b) No Adverse Possessors. There are no parties in possession of any portion of the Property as tenants at sufferance or trespassers.
 - c) No Lessees. The Seller will represent that the Property is not currently leased and the Seller will agree that it shall not enter into any lease or rental agreement for the Property, or any portion thereof, during the Buyer's Due Diligence Period, as described in Paragraph 7, and through the date of closing, without the prior written consent of the Buyer.
14. Miscellaneous.
- a) No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties.
 - b) Benefit and Burden. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, personal representatives, successors, and assigns. The provisions herein contained shall survive closing and delivery of the Warranty Deed and shall not be merged therein.
 - c) Entire Agreement. This Agreement contains the entire agreement between the Parties and any modification, alteration or addendum to this Agreement shall be valid only when written and executed by both Parties.
 - d) Severability. If any non-material part, paragraph, or article of this Agreement shall be determined to be invalid, or otherwise unenforceable, the validity of all the remaining parts, paragraphs, and articles shall not be affected thereby. Any such non-material parts, paragraphs, or articles shall be deemed severable.
 - e) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of or applicable to the State of Wisconsin.
 - f) Headings. The headings in this Agreement are meant for reference purpose only and shall not in any way affect the meaning or interpretation herein.

BE IT FURTHER RESOLVED that the 2018 Adopted Parks Division Capital Budget, Land Acquisition (~~Project 17128~~) be amended to include \$2,360,000 in new expenditure authority funded from the City-wide Parkland Acquisition Fund for the Cherokee Marsh Conservation Park Expansion Project; and

BE IT STILL FURTHER RESOLVED that the Mayor and City Clerk are authorized as the Buyer to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution.