



Legislation Text

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Fiscal Note

This resolution authorizes the purchase of 23.143 acres of land for a total purchase price of \$1,735,725, equating to a price of \$75,000 per acre. Subject to the qualification cited below, up to one half of the purchase price (\$867,862.50) will be funded by the Wisconsin Department of Natural Resources Stewardship grant, with the remainder funded by the City. Purchase of the property is contingent upon the receipt of State grant funding. The City's portion of the purchase price, currently estimated at \$867,862.50, will come from the Citywide Parkland Acquisition Fund (SI32). If the State grant funding available is less than \$867,862.50, the City will cover the gap with additional funding from the Citywide Parkland Acquisition Fund not to exceed a total of \$985,000 for the City's portion of the purchase price. Additionally, \$18,200 of project costs will be incurred by the City and will also be funded from the Citywide Parkland Acquisition Fund. This budget amendment therefore yields a total expenditure authorization increase of up to \$1,753,925.

Title

Authorizing the execution of a Purchase Agreement with the Natural Heritage Land Trust, Inc. for the City's acquisition of lands for the expansion of the Cherokee Marsh Conservation Park and amending the 2010 Parks Capital Budget to authorize the expenditure of funds for this acquisition.

Body

The City of Madison has acquired approximately 309 acres of fee simple lands and open space easements for the expansion of the Cherokee Marsh Conservation Park (the "Park"). The City has an opportunity to acquire additional lands for the Park.

The Natural Heritage Land Trust, Inc. ("NHLT") will enter into a Purchase Agreement with Cherokee Park, Inc ("Cherokee") (the "Cherokee/NHLT Agreement"), whereby Cherokee will agree to sell and NHLT will agree to purchase 23.143 acres (the "Property") and whereby NHLT will execute an agreement with the City to subsequently transfer the Property to the City for the expansion of the Park.

NHLT, in partnership with the City, will apply for a Wisconsin Department of Natural Resources Stewardship grant to provide funding for the acquisition of the Property. The purchase price for the Property is \$1,735,725.00 (the "Purchase Price"). NHLT will procure up to \$867,862.50 in grant funding for such purchase and the City will contribute the balance of the Purchase Price not covered by the grant in an amount not to exceed \$985,000.

In addition, project costs to complete the acquisition, including appraisal fees, closing costs and fees, are estimated to total \$18,200.

This resolution will authorize the execution of a Purchase Agreement with the NHLT for the purchase and funding of the Property.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase Agreement (the "Agreement") with the Natural Heritage Land Trust, Inc. ("NHLT") for the purchase and funding of 23.143 acres, legally described in Exhibit A below and depicted on Exhibit B attached hereto and made a part of hereof (the "Property"), for the acquisition of open space protection areas for the expansion of the Cherokee Marsh Conservation Park, on the following terms and conditions:

1. Description. NHLT agrees to sell to the City and the City agrees to purchase from NHLT the Property.

2. Purchase Price. The total Purchase Price to be paid for the Property shall be One Million Seven Hundred Thirty-Five Thousand Seven Hundred Twenty-Five Dollars (\$1,735,725.00); the City's portion of the Purchase Price shall not exceed \$985,000 for NHLT's interest in the Property.
3. Title Insurance. As provided in the Cherokee/NHLT Agreement, Cherokee shall, at its sole expense and at least fifteen (15) days prior to closing, provide a final commitment from a title insurance company licensed in Wisconsin to issue ALTA title insurance in the amount of One Million Seven Hundred Thirty-Five Thousand Seven Hundred Twenty-Five Dollars (\$1,735,725.00), together with a gap endorsement extending from the date of such commitment through the date of closing. Both NHLT and the City shall be named as insured parties. The commitment shall show title to the Property to be in good and marketable condition in the reasonable determination of the City, and subject only to liens to be paid out of the proceeds of the closing and to standard title insurance exceptions. The City shall notify NHLT of any valid objection to title, in writing, prior to closing. NHLT 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 NHLT be unable or unwilling to carry out this Offer by reason of a valid legal defect in title which the City is unwilling to waive, this Offer shall be void.
4. No Personal Property. The transaction contemplated by the Agreement does not include any personal property.
5. Contingencies of Sale.
 - a. The Agreement and the City's purchase of the Property are contingent upon NHLT's receipt of an environmental site assessment for the Property performed by a qualified independent environmental consultant, which discloses no potential defects. Such environmental site assessment will be a condition of the Cherokee/NHLT Agreement. As defined in the Cherokee/NHLT Agreement, a "defect" is defined as a material violation of any environmental law, a material contingent liability affecting the Property arising under any environmental law, the presence of an underground storage tank(s) or material levels of substances either on the Property or presenting a significant risk of contaminating the Property due to future migration from other properties. NHLT shall deliver a copy of the environmental site assessment to the City as soon as it becomes available. If a defect is disclosed, the Agreement shall automatically be null and void.
 - b. The Agreement and the City's purchase of the Property are contingent upon NHLT obtaining grant funding for NHLT's purchase of the Property in an amount up to 50% of the appraised value of the Property. If NHLT fails to obtain such funding, or if the grant funding is less than \$750,725, then the Agreement shall automatically be null and void.
6. Escrow Account and Closing.
 - a) This transaction is to be closed immediately following the closing of the transaction contemplated in the Cherokee/NHLT Agreement at the office of the title insurance company issuing the commitment for title insurance (the "Title Company").
 - b) Upon execution of the Agreement by both parties, the Title Company shall be provided an executed copy of the Agreement and an escrow account shall be opened with the Title Company on the following general terms and conditions:
 - i) On or before the date of closing, the City shall deposit into escrow with the Title Company funds in an amount not to exceed \$985,000 towards the Purchase Price (the "Escrowed Funds").

- ii) On or before the date of closing NHLT agrees to execute and to deposit into escrow with the Title Company a Warranty Deed conveying the Property to the City 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 and municipal services, recorded building and use restrictions and covenants, and general taxes levied in the year of closing.
 - iii) The Title Company shall be instructed that at the time of closing of the transaction contemplated in the Cherokee/NHLT Agreement, it shall proceed as follows:
 - (1) Release the Escrowed Funds to NHLT so that such funds may be used by NHLT to purchase the Property from Cherokee.
 - (2) Upon consummation of the transaction contemplated in the Cherokee/NHLT Agreement and immediately following the recording of the deed from Cherokee conveying the Property to NHLT, the Title Company shall record and deliver to the City the Warranty Deed from NHLT conveying the Property to the City; and
 - (3) Issue and deliver to the City the standard owner's policy of title insurance described in Paragraph 3.
 - c) The City shall pay all recording/filing fees, except that NHLT 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) NHLT shall pay all real estate transfer taxes payable pursuant to Section 77.25, Wisconsin Statutes, if any. Any real estate transfer taxes paid by NHLT shall be reimbursed to NHLT by the City at the time of closing.
 - e) The City shall agree to accept assignment from NHLT of the Stewardship Program grant and management grant by the DNR.
 - f) The closing and escrow fees charged by the Title Company, if any, and related costs shall be shared equally between the City and NHLT.
7. Real Estate Taxes. As provided in the Cherokee/NHLT Agreement, net general taxes shall be prorated between Cherokee and NHLT at the time of closing based on the net general taxes for the year of closing. The net general taxes paid by NHLT shall be reimbursed to NHLT by the City at the time of closing.
8. Special Assessments. As provided in the Cherokee/NHLT Agreement, Cherokee shall be responsible for special and deferred assessments levied against the Property prior to closing
9. Representations. NHLT 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. There are no parties in possession of any portion of the Property as lessees.

BE IT FURTHER RESOLVED that the 2010 Parks Capital Budget be amended by the addition of a new Capital Project #30: "Cherokee Marsh Conservation Park", with expenditure authorization of \$1,735,725 for the acquisition of the Property, funded with City parkland dedication fees and a Wisconsin Department of Natural Resources Stewardship grant.

BE IT STILL FURTHER RESOLVED that if the State grant funding available is less than \$867,862.50, the City will cover the gap with additional funding from the Citywide Parkland Acquisition Fund not to exceed a total of \$985,000 for the City's portion of the Purchase Price.

BE IT STILL FURTHER RESOLVED that the Mayor and City Clerk are authorized 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.

Exhibits A and B follow

EXHIBIT A

Legal Description of the Property

Part of Outlot 2, Certified Survey Map No. 12439, being located in part of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, part of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and part of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 24, T8N, R9E, City of Madison, Dane County, Wisconsin more particularly described as follows:

Commencing at the Northeast corner of said Section 24; thence along the East line of the said Northeast $\frac{1}{4}$, S01°37'04"W, 1355.32 feet; thence N76°17'16"W, 33.75 feet to the West right of way line of North Sherman Avenue and the point of beginning; thence N76°17'16"W, 969.85 feet; thence N77°40'18"W, 519.03 feet; thence N19°02'25"W, 677.31 feet to the Southerly line of Outlot 1, said Certified Survey Map No. 12439; thence along said Southerly line N61°43'10"E, 232.65 feet; thence continuing along said Southerly line N90°00'00"E, 388.48 feet; thence continuing along said Southerly line S78°45'00"E, 101.45 feet; thence continuing along said Southerly line S56°15'00"E, 101.45 feet; thence continuing along said Southerly line S33°45'00"E, 101.45 feet; thence continuing along said Southerly line S11°15'00"E, 101.45 feet; thence continuing along said Southerly line S00°00'00"W, 65.00 feet; thence continuing along said Southerly line N90°00'00"E, 67.44 feet; thence continuing along said Southerly line S65°41'19"E, 743.43 feet; thence continuing along said Southerly line S88°22'56"E, 84.89 feet to the said West right of way line of North Sherman Avenue; thence along said West right of way line S01°37'04"W, 457.92 feet to the point of beginning. The above described parcel contains 1,008,127 square feet or 23.143 acres and will become Outlot 2 in the proposed Certified Survey Map of which this parcel is a part.