



## Legislation Text

File #: 09836, Version: 1

### Fiscal Note

This resolution authorizes funding for Phase 2 of the Cherokee Marsh Conservation Park land acquisition project. Total purchase costs of \$709,145 are to be derived from grant funding of \$531,858.75 to be secured by the National Heritage Land Trust, Inc., and City funding of \$177,286.25. An estimated \$180,000 will be utilized from the City's fee in lieu of dedication fund (Impact Fee Fund si32) for land acquisition and various closing costs.

### Title

Authorizing the Mayor and City Clerk to enter into a Purchase Agreement with the Natural Heritage Land Trust, Inc. for Phase 2 of the City's acquisition of lands for the planned expansion of the Cherokee Marsh Conservation Park and amending the 2008 Parks Capital Budget to authorize the expenditure of \$180,000 for this acquisition.

### Body

#### PREAMBLE

On March 6, 2007, Cherokee Park, Inc. ("Cherokee") and the City entered into a Memorandum of Understanding ("MOU") providing for the City's phased acquisition of open space protection areas for the expansion of the Cherokee Marsh Conservation Park through the purchase of up to 39 upland acres and 239 wetland acres. The MOU provides that the acquisitions will occur in two phases and will include a mix of fee simple acquisition and purchase of open space easements. The second acquisition phase is comprised of approximately 236 acres legally described on Exhibit A and more particularly depicted on Exhibit B attached hereto and made a part hereof (the "Phase 2 Property").

The Natural Heritage Land Trust, Inc. (the "NHLT") has entered into a Purchase Agreement with Cherokee, dated January 15, 2008 (the "Cherokee/NHLT Agreement"), whereby Cherokee has agreed to sell and NHLT has agreed to purchase the Phase 2 Property and whereby NHLT has agreed to subsequently transfer the Phase 2 Property to the City.

NHLT, in partnership with the City, has applied for certain grant funding for the acquisition of the Phase 2 Property. The combined purchase price and project costs for the Phase 2 Property is \$709,145.00. NHLT intends to procure \$531,858.75 in grant funding for such purchase and the City intends to contribute \$177,286.25.

This resolution will authorize the execution of a Purchase Agreement with the NHLT for the purchase and funding of the Phase 2 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. (the "NHLT") for the purchase and funding of Phase 2, legally described in Exhibit A below and depicted on Exhibit B attached hereto and made a part of hereof (the "Phase 2 Property"), of the acquisition of open space protection areas for the expansion of the Cherokee March 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 Phase 2 Property.

2. Purchase Price. The total purchase price to be paid by the City for NHLT's interest in the Phase 2 Property shall be One Hundred Seventy Seven Thousand Two Hundred Eighty Six and 75/100 Dollars (\$177,286.75) (the "Purchase Price").
3. Title Insurance. As provided in Paragraph 6.h. of 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 Seven Hundred Nine Thousand and 00/100 Dollars (\$709,000.00), 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 Phase 2 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 Phase 2 Property are contingent upon NHLT's receipt of an environmental site assessment for the Phase 2 Property performed by a qualified independent environmental consultant, which discloses no potential defects. Such environmental site assessment is 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 Phase 2 Property arising under any environmental law, the presence of an underground storage tank(s) or material levels of substances either on the Phase 2 Property or presenting a significant risk of contaminating the Phase 2 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 Phase 2 Property are contingent upon NHLT obtaining grant funding for NHLT's purchase of the Phase 2 Property and related project costs in the amount of \$531,858.75. If NHLT fails to obtain such funding, 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 the Purchase Price.

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 Phase 2 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 Purchase Price to NHLT so that such funds may be used by NHLT to purchase the Phase 2 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 Phase 2 Property to NHLT, the Title Company shall record and deliver to the City the Warranty Deed from NHLT conveying the Phase 2 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 Phase 2 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.

e) 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 Paragraph 6.g. of 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.

8. Special Assessments. As provided in Paragraph 6.g. of the Cherokee/NHLT Agreement, Cherokee shall be responsible for special and deferred assessments levied against the Phase 2 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 Phase 2 Property.

b) No Adverse Possessors. There are no parties in possession of any portion of the Phase 2 Property as tenants at sufferance or trespassers.

c) No Lessees. There are no parties in possession of any portion of the Phase 2 Property as lessees.

BE IT 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.

BE IT FURTHER RESOLVED that the 2008 Parks Capital Budget (Project# 6, Development Fee Projects) be amended to authorize the expenditure of \$180,000 for the acquisition of the Phase 2 Property, funded with parkland dedication fees.

#### EXHIBIT A

##### Legal Description of the Phase 2 Property:

All those wetlands owned by Cherokee Park Inc. located in part of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ , part of the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ , the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ , the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$ , part of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , part of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , part of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , part of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 18, and part of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ , part of the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 19, all in T8N, R10E, Town of Burke, Dane County, Wisconsin.

The Phase 2 Property is depicted in the attached Exhibit B.