



Legislation Text

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Fiscal Note

The proposed resolution authorizes the execution of a Purchase and Sale Agreement between the City of Madison and Judith Voit Underwood for the City's acquisition of the property for the expansion of Sherry (O.B.) Park. The estimated acquisition cost is \$227,900 for the parcel plus \$20,000 in additional real estate costs for environmental site assessment, title work, miscellaneous closing costs, and staff time for a total amount of \$247,900. The Parks Division 2020 adopted capital budget includes \$6,520,000 in the Land Acquisition capital program (Munis project #17128), funded by Park Impact Fees. Sufficient funding is available in this project for the purchase of the parcel.

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Judith Voit Underwood for the City's acquisition of the property located at 3461 Milwaukee Street for the expansion of Sherry (O.B.) Park. (15th AD)

Body

WHEREAS, Judith Voit Underwood ("Seller") is the owner of the property containing 8,812 square feet of land and single family home improvements, located at 3461 Milwaukee Street and legally described on Exhibit A, attached hereto. ("Property"); and

WHEREAS, the City of Madison ("City") desires to purchase the Property for the expansion of Sherry (O.B.) Park, as the acquisition of properties in the vicinity of Sherry (O.B.) Park is a long term goal of the City's Parks Division; and

WHEREAS, the City's adopted Milwaukee Street Special Area Plan identifies the Property as parkland on the Future Land Use Map and includes the following statement: "The plan also includes the potential expansion of OB Sherry Park via acquisition of five residential properties on the Milwaukee Street between Leon Street and Fair Oaks Avenue. This would provide much improved visibility into, and awareness of OB Sherry Park with the intent of activating the park space. It's recommended the City pursue acquisition of these properties as owners elect to put them up for sale, rather than through an eminent domain process"; and

WHEREAS, the City's acquisition of the Property would provide expanded opportunities for recreational uses in this park, which is consistent with the City's adopted 2018 Park and Open Space Plan which includes the recommendation to "Acquire parkland to reduce parkland deficiencies and address increasing residential density"; and

WHEREAS, the Seller agrees, by virtue of an executed Purchase and Sale Agreement ("Agreement"), to sell the Property to the City for a purchase price of \$227,900, which was negotiated based on verification by the City's Office of Real Estate Services that the Seller's asking price was reasonable and supported by recent comparable sales in the subject property's neighborhood that are similar to the Seller's home.

NOW, THEREFORE, BE IT RESOLVED that the City's Common Council hereby authorizes the City's execution, as Buyer, of the Agreement with the Seller for the purchase of the Property, subject to the following terms and conditions:

1. Property. The Buyer shall purchase and the Seller shall sell and convey by Warranty Deed ("Deed") fee simple title to the real property identified as tax parcel 251/0710-054-0417-5, located at 3461

Milwaukee Street, Madison, Wisconsin ("Property"), is legally described on Exhibit A, attached hereto.

2. Description. The Buyer agrees to purchase and the Seller agrees to convey the Property described herein, together with the building, improvements and fixtures located thereon under the terms and conditions hereinafter set forth.
3. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Parties, as indicated on the signature pages.
4. Purchase Price. The total purchase price for the Seller's interest in the Property ("Purchase Price") shall be Two Hundred Twenty-Seven Thousand Nine Hundred and 00/100 Dollars (\$227,900). The Purchase Price shall be payable in cash at the time of conveyance of the Property ("Closing"), subject to the adjustments and prorations herein provided.
5. Earnest Money. Within ten (15) business days of the Effective Date, the Buyer shall deposit with the Title Company, as defined below, approximately 5% of the Purchase Price, or Eleven Thousand Four Hundred and 00/100 Dollars (\$11,400.00) as "Earnest Money", which will be non-refundable except that the Earnest Money shall be forfeited and returned to the Buyer as provided in Paragraphs 9, or 12, or if Seller defaults on the terms of the Agreement. The Earnest Money shall be applied toward the Purchase Price at Closing in accordance with Paragraph 4.
6. Personal Property. The purchase of the Property does not include any personal property.
 - a. The Seller shall remove any and all personal property from the Property before Closing, in particular any and all items that are suspected to contain hazardous materials, excepting the following items which the Seller may leave: Stove/Range, Dishwasher, Washer, Pool Table, and Piano.
 - b. The Seller has the option to remove the wood burning stove insert & liner from the living room fireplace.
7. Delivery of Documents. Seller has provided the Buyer with a Real Estate Condition Report and Offer Addendum S for the Property, both of which are attached to the Agreement and incorporated by reference. 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.
8. 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, or any other persons for Seller, in entering into the Agreement or in closing the transaction described herein. Buyer's Closing on the acquisition of the Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property and has waived or satisfied as generally described in Paragraph 9.
9. Due Diligence Period. The Buyer shall have sixty (60) days from the Effective Date ("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. In the event of termination, the Buyer's Earnest Money shall be promptly refunded by the Title Company to the Buyer.

- a. Inspections and Testing. The Buyer, at its sole expense, has the option to conduct various inspections and testing on the Property and any improvements located thereon, including a Phase 1 or 2 Environmental Site Assessment report (“ESA”) and related testing, soils testing and any other inspections or testing deemed necessary by the Buyer. In the event Buyer’s Phase 1 ESA recommends a Phase 2 ESA, the Buyer may notify Seller in writing of its desire to extend the Due Diligence Period by up to 60 days, if necessary to conduct such investigation. The Due Diligence period may then be extended as mutually agreed to by the Parties. If the Parties are unable to agree on an extension of the Due Diligence Period, the Buyer may declare the Agreement null and void by providing notice as set forth in Paragraph 14 of the Agreement and the Buyer shall be entitled to a return of the Earnest Money. In no event shall the Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property or any improvements located thereon.
- b. City Budget Authorization. The Buyer shall obtain budget authorization from the Common Council of the City of Madison for the purchase of the Property.

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 Closing 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 shall occur on or before fifteen (15) days from the date the Seller receives such notice (“Closing Date”), unless the Parties agree in writing to another date.

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

10. Access to Property. The Buyer and the Buyer’s authorized agents, engineers, consultants, and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing as provided in Paragraph 9 at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer will repair, at the Buyer’s cost, all damages caused by its inspections or testing so that the condition of the Property is returned to as good or better condition as existed prior to the inspections or testing.
11. Survey. 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 12 shall be at the sole cost and expense of the Buyer.
12. Title Insurance. Seller shall provide to the Buyer, at the Seller’s expense, within thirty (30) days prior to Closing a title commitment from Knight Barry Title Group (“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 and the Buyer shall be entitled to a return of the Earnest Money.

13. Closing.

- a. The Closing Date shall be no later than Monday, March 16, 2020. If the Parties are unable to schedule Closing on or before the Closing Date, the Parties shall have the option to proceed to Closing on a date that is mutually agreed to by both Parties, or if one or both Parties do not desire to reschedule Closing for a later date, either Party may declare the Agreement null and void by providing notice as set forth in Paragraph 14 of the Agreement.
- b. If the Parties agree to a later Closing Date, the 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.
- c. The Seller agrees to execute and deliver to the Buyer at Closing the Deed prepared by the Buyer, 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 and municipal services; easements; recorded building and use restrictions and covenants.
- d. 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 this Agreement.
- e. Real estate taxes with respect to the Property for the year of Closing shall be prorated between the Parties as of the Closing Date based upon the latest known assessment and latest known mill rate. At Closing, Seller shall credit Buyer for the Seller's prorata share of the 2020 real estate taxes for the Property, as the Buyer will be responsible for the payment of the 2020 tax bill received at the end of said year.
- f. The Seller shall be responsible for any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the Property as of the Closing Date.
- g. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.
- h. The Seller shall pay a 3% listing broker commission due in connection with the sale of the Property.
- i. Title Company shall prepare and deliver at Closing the receipt for the Real Estate Transfer Return required by the Wisconsin Department of Revenue.
- j. The Buyer shall pay one-half, and the Seller shall pay the other half of any closing escrow fees charged by the Title Company to facilitate Closing. All other closing costs shall be prorated between the Parties.

14. Default. If the Seller defaults in the full and timely performance of any of its obligations hereunder, the Buyer shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate the Agreement or seek specific performance. If the Buyer

defaults in the full and timely performance of any of its obligations hereunder, the Seller shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Agreement or seek specific performance.

15. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to sign, accept, and record any and all documents and legal instruments required to complete the transactions contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney.