



Legislation Text

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Fiscal Note

Fiscal note pending.

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Sally J. Stevens for the City's acquisition of the property located at 354 East Lakeside Street for assemblage with Olin Park.

Body

WHEREAS, Sally J. Stevens ("Seller") is the owner of the property containing 8,591 square feet of land and single family home improvements, located at 354 East Lakeside Street legally described as Lot 3, Plat of Pleasure Park, in the City of Madison, Dane County, Wisconsin ("Property"); and

WHEREAS, the City of Madison ("City") desires to purchase the Property for assemblage with Olin Park, as the acquisition of properties in the vicinity of Olin Park is a long term goal of the City's Parks Division; and

WHEREAS, the City's adopted 2018 Comprehensive Plan identifies the Property as parkland on the Generalized Future Land Use Map with the following note: "The existing office and residential uses are recommended to continue until a future opportunity arises to convert this area to public park and open space use ...;" and

WHEREAS, the City's acquisition of the Property would add approximately 58 linear feet of shoreline for public access to Lake Monona, while providing expanded opportunities for recreational uses in this heavily used park, which is consistent with the City's adopted 2018 Park and Open Space Plan includes the recommendation to "Improve Public Access to Lakes"; 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 \$787,500, which was negotiated based on two appraisals reviewed and approved by the City's Office of Real Estate Services; and

WHEREAS, the City and the Seller ("Parties") agree that the Agreement for the acquisition of the Property shall include an addendum defining initial terms, in the event the Seller desires to lease the Property after conveyance to the City, to allow time for the Seller to purchase and move to a replacement property.

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.

- a. 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 251/0709-252-0303-9, located at 354 East Lakeside Street, Madison, Wisconsin ("Property"), legally described as follows:

Lot 3, Plat of Pleasure Park, in the City of Madison, Dane County, Wisconsin.

- b. Fee simple title shall include the building, improvements and fixtures located 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 pages.
3. Purchase Price. The total purchase price for the Seller's interest in the Property ("Purchase Price") shall be Seven Hundred Eighty Seven Thousand Five Hundred and 00/100 Dollars (\$787,500). 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.
4. Earnest Money. Within ten (10) business days of the Effective Date, the Buyer shall deposit with the Title Company, as defined below, Thirty-Nine Thousand Two Hundred Fifty and 00/100 Dollars (\$39,250) 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 8, or 11, 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 3.
5. Personal Property. The purchase of the Property does not include any personal property.
- a. The Seller shall remove any and all personal property, including appliances, from the Property before Closing.
- b. If the Seller desires to occupy the Property subsequent to Closing, as evidenced by the execution of Addendum A Lease to Seller ("Addendum A"), all personal property shall be removed on or before the expiration or termination of the lease back term, pursuant to Paragraph 11 of Addendum A.
- c. The Seller shall ensure that all utilities attached to personal property be shut off prior to removal and that the Property shall be left in a safe condition upon removal of personal property.
6. 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.
7. 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 Buyer's contingencies, as generally described in Paragraph 8.
8. Buyer Contingencies. The Buyer shall have sixty (60) days from the Effective Date (the "Buyer's Contingency Period") to satisfy or waive the following contingencies (the "Buyer's Contingencies") or to otherwise terminate the Agreement if any of the Buyer's Contingencies are unacceptable, in the Buyer's sole discretion. In the event Buyer's Phase 1 Environmental Site Assessment report ("ESA") recommends a Phase 2 ESA, the Buyer must notify Seller in writing to extend the Buyer's Contingency Period as necessary to conduct such investigation. If the Buyer timely terminates the Agreement as a result of any of the Buyer's Contingencies, the 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 ESA and related testing, soils testing and any other inspections or testing deemed necessary by the Buyer. 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.
- c. Lease. The Parties may negotiate the terms of Addendum A during the Buyer's Contingency Period in the event Seller wants to occupy the Property after Closing. Pursuant to Paragraph 2 of Addendum A, the Seller shall also execute a Lease at Closing, setting forth standard leasing terms and conditions for the City of Madison subject to mutual negotiation between the Parties. Upon execution by the Seller, Addendum A shall be attached hereto and made part of this Agreement.

If the Buyer does not provide written notice terminating the Agreement on or prior to the sixtieth (60th) day of the Buyer's Contingency 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. The Buyer's Contingency Period may be extended upon written agreement of the Parties.

Should the Buyer desire to close prior to the end of the Buyer's Contingency 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.

9. Access to Property.

- a. Inspections & Testing. 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 anticipated by the Buyer's Contingencies including, but not limited to, a Phase 1 or 2 ESA of the Property and/or a physical inspection 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 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.
- b. Walk-Through. The Buyer will be permitted to enter the building located on the Property prior to Closing, at a time agreed to by the Seller.

10. 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 10 shall be at the sole cost and expense of the Buyer.

11. Title Insurance. Seller shall obtain, at the Seller's expense, a title commitment from Preferred Title, LLC ("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. The Buyer shall notify the Seller of any valid objection to title, in writing, prior to the expiration of Buyer's Contingency Period. 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.

12. 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 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.

13. Closing.

- a. Closing shall occur on or before fifteen (15) days from (a) the expiration of the Buyer's Contingency 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 and 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 this Agreement.
- d. 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 2019 real estate taxes for the Property, as the Buyer will be responsible for the payment of the 2019 tax bill received at the end of said year.
- e. 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.
- f. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.
- g. Title Company shall prepare and deliver at Closing the receipt for the Real Estate Transfer Return required by the Wisconsin Department of Revenue.
- h. The Seller shall terminate all service contracts and leases as of the Closing Date, or the expiration or termination dates set forth in Addendum A.

- i. 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. Notices. All notices required or permitted to be given hereunder shall be given by certified mail, postage prepaid, or by overnight delivery service, or shall be personally served, to the Parties at the following addresses:

BUYER: City of Madison
Economic Development Division
Office of Real Estate Services
Attention: Manager
Post Office Box 2983
Madison, WI 53701-2983
Facsimile: (608) 267-8739

SELLER: Sally J. Stevens
354 E. Lakeside Street
Madison, WI 53701

All notices shall be deemed received either when actually received or three (3) days after deposit (if mailed), one business day after deposit with the delivery service (if sent by overnight delivery), or when delivered (if personally delivered). Either party may change the above addresses by written notice to the other.

15. 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.
16. Entire Agreement. This Agreement contains the entire agreement between the Parties and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby, with the exception of Addendum A and the related Lease, if executed and attached hereto. This Agreement may be amended only by a further written document signed by the Parties.
17. 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.
18. Captions. The captions of the paragraphs in this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of the provisions hereof.
19. Severability. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision(s) involved and shall not affect the validity or enforceability of the remaining provisions.
20. Counterparts and Transmittal of Signatures. This Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same agreement. A signed copy of this Agreement transmitted by facsimile or email shall be treated as an original and shall be binding against the party whose signature appears on such copy.
21. Time of the Essence. Time is of the essence for the performance of this Agreement.

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.