



Legislation Text

File #: 27581, **Version:** 1

Fiscal Note

This resolution authorizes the purchase of land for the expansion of Cherokee Marsh Conservation Park, funded in part by the Citywide Parkland Acquisition Fund (SI32). The purchase of \$380,000 will be made by The Natural Heritage Land Trust, Inc. and is funded via a combination of State, County and City resources. The estimated City contribution is \$84,000, including \$81,000 for land acquisition and \$3,000 for miscellaneous closing costs including any real estate transfer taxes. Sufficient funding is available within Fund SI32 to allow for this purchase and related costs. Sufficient budgetary authorization exists for the purchase within the 2012 Parks Adopted Capital Budget, Project #4 - Parkland Acquisition.

Title

Authorizing the execution of a Purchase Agreement with the Natural Heritage Land Trust, Inc. for the City's acquisition of lands (the Wheeler Triangle) for the expansion of the Cherokee Marsh Conservation Park.

Body

The City of Madison has acquired approximately 330 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. (the "NHLT") has entered into a Purchase Agreement with Cherokee Park, Inc ("Cherokee"), dated September 13, 2011, whereby Cherokee has agreed to sell and NHLT has agreed to purchase 5.821 acres (located at Wheeler Road and Comanche Way in Madison (known as the Wheeler Triangle) (the "Property"). The "Purchase Price" for the Property is \$380,000 and is supported by an appraisal. The NHLT's obligation to purchase the Property is contingent upon the NHLT obtaining grants or contributions for the purchase of the Property in an amount not less than the Purchase Price.

The Common Council adopted a resolution (File No. 23685) on September 7, 2011 which supported the application by the NHLT for a Wisconsin Knowles-Nelson Stewardship Program (the "Stewardship Program") grant to purchase the Property and the subsequent donation of the Property to the City. The Stewardship Program grant application was for 50% of the DNR-certified appraised value of the Property (\$436,000). The Stewardship Program grant application was for the entire Purchase Price of the Property and did not contemplate any contribution by the City. The Stewardship Program awarded a grant to the NHLT in the amount of \$218,000 which did not cover the entire Purchase Price. The NHLT is seeking additional grant funding of \$81,000 from the Dane County Conservation Fund and a contribution of \$81,000 from the City to be able to fully fund the acquisition of the Property. Contingent on obtaining additional funding from Dane County and a contribution from the City, the NHLT will acquire the Property and transfer ownership to the City for the expansion of the Park.

This resolution will authorize the execution of a Purchase Agreement with the NHLT for the acquisition of the Property and the assignment of the Stewardship Grant and Management Contract between the Wisconsin Department of Natural Resources and the NHLT to City that will deed restrict the Property from any use that is inconsistent with public outdoor recreation and the Stewardship Program and Management Contract.

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 of 5.821 acres (the "Property"), legally described in Exhibit A below and depicted on the attached Exhibit B, 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 by the City for NHLT's interest in the Property shall be Eighty One Thousand Dollars (\$81,000) (the "Purchase Price").
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 Three Hundred and Eighty Thousand Dollars (\$380,000), 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.
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 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 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 grants or contributions for NHLT's purchase of the Property in an amount not less than the Purchase Price as follows: \$218,000 from the Wisconsin Knowles-Nelson Stewardship Program; \$81,000 from the Dane County Conservation Fund; and, \$81,000 from the City (the "City's Contribution"). 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 the City's contribution into escrow with the Title Company and the NHLT shall deposit into escrow with the Title Company the funding it was awarded from the Wisconsin Knowles-Nelson Stewardship Program and the Dane County Conservation Fund which amounts collectively shall equal 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 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, general taxes levied in the year of closing, and the Wisconsin Department of Natural Resources (the "DNR") Stewardship Grant and Management Contract executed between the NHLT and the DNR.
 - 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 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 above.
 - 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) The City 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.
 - f) The City shall accept the assignment of the Knowles-Nelson Stewardship and Development of Local Parks Outdoor Recreation Aids Grant Agreement (the "Grant Agreement") executed between the NHLT and the Wisconsin Department of Natural Resources that will deed restrict any use of the Property that is inconsistent with public outdoor recreation and the Grant Agreement.
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.
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 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 STILL FURTHER RESOLVED that funds in an amount not to exceed Three Thousand Dollars (\$3,000) are authorized for miscellaneous closing costs including any real estate transfer taxes, escrow fees, and recording/filing fees. .

EXHIBIT A

Legal Description of the Property:

Certified Survey Map Number 12991, recorded on September 27, 2010 in the Office of the Register of Deeds for Dane County, Wisconsin in Volume 83 of Certified Survey Maps, Pages 47-50, inclusive, as Document Number 4695362, in the City of Madison, Dane County, Wisconsin.