



## Legislation Text

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File #: 67718, Version: 3

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### Fiscal Note

The proposed resolution amends the 2021 Parks Division Capital Budget by appropriating an additional \$2,100,000 in Citywide Parkland Impact Fees to the Whitetail Ridge Expansion Project (Munis No. 13849). This resolution also authorizes the execution of a Purchase and Sale Agreement between the City of Madison and Cherokee Park Inc. for the City's purchase of the property located in City of Madison at the southeast corner of Wheeler and Sherman. The total acquisition costs are estimated to be \$2,100,000 broken out as follows: \$2,061,500 for the purchase price of the Real Estate, \$25,000 for demolition costs, and \$13,500 for miscellaneous closing costs (prorated taxes, filling fees, etc.) and Real Estate staff costs.

### Title

SECOND SUBSTITUTE - Amending the 2021 Adopted Parks Division Capital Budget and Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Cherokee Park, Inc. for the City's purchase of approximately 22 acres located at the southeast corner of N. Sherman Avenue and Wheeler Road for the expansion of Whitetail Ridge Park and the preservation of urban forest canopy.

### Body

WHEREAS, Cherokee Park, Inc. (the "Seller") owns approximately 22 acres of vacant land located in the City of Madison, Dane County, Wisconsin, as legally described on attached Exhibit A and depicted on attached Exhibit B (the "Property"); and

WHEREAS, the property is a heavily wooded parcel that includes mature native trees that provide a significant enhancement to the urban forest managed by the Parks Division; and

WHEREAS, the property provides an additional natural landscape feature in close proximity to the natural landscapes already managed by the City as a part of the adjacent Cherokee Marsh Conservation Park system; and

WHEREAS, the Property is currently located within the City of Madison and is identified as potential residential development in the City's **2018** Comprehensive Plan and 2007 Cherokee Special Area Plan; and

WHEREAS the Cherokee Special Area Plan recognizes the "high quality" of the woods on the subject site and recommends that any residential development of the property preserve as many of the existing trees as possible for "environmental and aesthetic reasons"; and

WHEREAS, the City of Madison (the "City") desires to preserve the Property for park and recreational purposes; and

WHEREAS, the property is a heavily wooded parcel that includes mature native trees that provide a significant enhancement to the urban forest managed by the City's Parks Division; and

WHEREAS, the property provides an additional natural landscape feature in close proximity to the natural landscapes already managed by the City as a part of the adjacent Cherokee Marsh Conservation Park system; and

WHEREAS, Whitetail Ridge Park is currently a 9.55 acre park that is well used and includes a soccer field, basketball court, and playground; and

WHEREAS, expansion of Whitetail Ridge Park through this acquisition and future expansion corresponding to development to the east of the current acquisition will create a larger community park that will meet the diverse recreational needs of the City's Northside through future planning processes; and

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison authorizes the execution of a Purchase and Sale Agreement between the City and Cherokee Park Inc., for the City's purchase of approximately 22 acres of wooded land for park and recreation purposes, as legally described on attached Exhibit A and depicted on attached Exhibit B; subject to the following terms and conditions:

1. The Property. The Buyer shall purchase and the Seller shall sell and convey by Warranty Deed ("Deed") fee simple title to 22 acres, more or less, of real property, along with all improvements, legally described on attached Exhibit A and depicted on attached Exhibit B ("Property").
2. Effective Date. The "Effective Date" shall be the date first stated above, which shall be the date of the last signature signed accepting this Agreement.
3. Conveyance. The City shall purchase and the Seller shall sell and convey by Warranty Deed ("Deed") fee simple title to the Property free and clear from all liens and encumbrances excepting the following: municipal and zoning ordinance.
4. Purchase Price. The total purchase price of the Seller's interest in the Property ("Purchase Price") shall be Two Million Sixty-One Thousand Five Hundred Dollars and 00/100 (\$2,061,500.00). The Purchase Price shall be payable in cash at the time of sale ("Closing"), subject to the adjustments and proration provided herein.
5. Personal Property. The transaction contemplated by this Agreement does not include any personal property.
6. Delivery of Documents. Within fifteen (15) days of the Effective Date, the Seller will reproduce at the Seller's expense and send to the Buyer all lease agreements, service contracts, 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, their agents or employees, in entering into the Agreement or in closing the transaction described herein. Except as provided in Paragraph 8 below, the Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property.
8. Due Diligence Period. The Buyer shall have one hundred twenty (120) 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.

If the Buyer does not provide written notice terminating the Agreement on or prior to the one hundred twentieth (120th) 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 close the transaction 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 date shall occur on or before fifteen (15) days from the date the Seller receives such notice, unless the Parties agree in writing to another date.

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

9. Inspections and Testing. The Buyer and the Buyer's authorized agents, contractors, and engineers shall be permitted access to the Property for the purpose of conducting inspections and testing, including, but not limited to, a review of the National Environmental Policy Act, Phase 1 environmental assessment, and any other inspections deemed necessary by the Buyer. Access shall be at reasonable times with advance notice to Seller and be conducted in a manner so as to not unreasonably interfere with any occupant/tenant of the Property.
10. Access to Property. The Buyer will be permitted to enter the Property during City's Contingency Period, at times agreed to by the Seller, for the purpose of familiarizing City with the facilities and planning for occupancy.
11. Existing Lease. The Seller has entered into a lease with \_\_\_\_\_ ("Lessee") with the term expiring on \_\_\_\_\_. The Seller shall agree not to enter into any additional leases or rental agreements for the Property, or any portion thereof, during the Buyer's Due Diligence Period, as described in Paragraph 8, and through the Closing date, without the prior written consent of the Buyer. The Seller shall provide to the Buyer a copy of the current lease within fifteen (15) days of the Effective Date and prepare an assignment of lease for the Buyer's review.
12. Insurance. Any of City's authorized agents, engineers, consultants, appraisers and contractors entering the Property or Building shall carry commercial general liability insurance naming the Seller, its members, managers, agents and employees as additional insureds, with a minimum limit of \$1,000,000 per occurrence and annual aggregate. These policies shall provide Seller with thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of the Agreement. As evidence of this coverage, any of City's authorized agents, engineers, consultants, appraisers and contractors shall furnish Seller with a certificate of insurance. If the coverage required above expires with the Agreement is in effect, City and any of its authorized agents, engineers, consultants, appraisers and contractors shall provide a renewal certificate to Seller for approval. The obligations of this paragraph shall terminate at Closing.
13. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing a commitment from First American Title Insurance Company ("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 and owner's affidavit. 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 or judgments 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 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.

14. 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 11 shall be at the sole cost and expense of the Buyer.
15. Commissions. The Seller represents that it has not entered into any contracts with any brokers or finders nor has the Seller obligated their selves 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 their selves 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 15 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.
16. Closing.
  - a. 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.
  - 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, judgments and encumbrances, excepting the following: Municipal and zoning ordinances and agreements entered under them; recorded easements for the distribution of utility, municipal services; easements; neighborhood plans; recorded building and use restrictions and covenants; taxes for the year of Closing as described in (d) below; and all other matters of record or that would be disclosed by a complete and accurate ALTA survey of the property which are not objected to or waived by the City as further set forth in the Agreement.
  - 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 the Agreement.
  - d. All real estate taxes with respect to the Property in the year of Closing shall be prorated between the Buyer and the Seller as of the Closing date based upon the latest known assessment and latest known mil rate.
  - e. The Seller shall be responsible for any existing special or area assessments 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 fees related to the Wisconsin real estate transfer fee and the preparation of the required transfer return by the Title Company due in connection with conveyance of the Property.
  - g. All costs charged by the Title Company to facilitate Closing shall be prorated between the Parties.

Prior to Closing, the Buyer shall obtain authorization from the City of Madison Common Council for

the approval and execution of this Agreement by the City.

17. Representations. The Seller, to the best of Seller's knowledge, 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. There is an existing lease on a portion of the property as identified in Section 11.
  - b. No Adverse Possessors. There are no parties in possession of any portion of the Property as tenants at sufferance or trespassers.
18. Miscellaneous.
- a. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties.
  - b. Benefit and Burden. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, personal representatives, successors, and assigns. The provisions herein contained shall survive Closing and delivery of the Deed.
  - c. Entire Agreement. This Agreement contains the entire agreement between the Parties and any modification, alteration or addendum to this Agreement shall be valid only when written and executed by both Parties.
  - d. 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
  - e. 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 the Agreement transmitted by facsimile electronic scanned copy (.pdf) or similar technology and shall be as valid as original. This Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.
  - f. Severability. If any non-material part, paragraph, or article of this Agreement shall be determined to be invalid, or otherwise unenforceable, the validity of all the remaining parts, paragraphs, and articles shall not be affected thereby. Any such non-material parts, paragraphs, or articles shall be deemed severable.
  - g. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of or applicable to the State of Wisconsin.

- h. Headings. The headings 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.

BE IT FURTHER RESOLVED that the 2021 Adopted Parks Division Capital Budget be amended to include up to \$2,100,000 in new expenditure authority funded with \$2,100,000 from the Citywide Parkland Impact Fee Funds; and

BE IT FURTHER RESOLVED that the Mayor and Clerk are authorized to sign and accept 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; **and**

BE IT FURTHER RESOLVED that the Cherokee Special Area Plan is amended to reflect the acquisition of the subject lands for public open space and conservation purposes and change the recommended land use for the property to Park and Open Space or similar.