



## Legislation Text

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**File #:** 54220, **Version:** 1

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### **Fiscal Note**

The proposed resolution amends the Parks Division 2019 Capital Budget by appropriating \$5,550,000 from the Citywide Parkland Impact Fee District (Munis 12405112) to the Olin Park Expansion project (Munis project 17515) and authorizes the execution of a Purchase and Sale Agreement (PSA) between the City of Madison and the owner of the property. The total acquisition costs are estimated to be \$5,550,000: \$5,500,000 for the purchase price of the property, \$30,000 for testing, and \$20,000 for miscellaneous closing costs (prorated taxes, filing fees, etc.) and Real Estate staff costs.

### **Title**

Amending the 2019 Adopted Parks Division Capital Budget and Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Wisconsin Medical Society, Inc. for the City's acquisition of two parcels of land located at 330 and 342 East Lakeside Street for assemblage with Olin Park. (13th A.D.)

### **Body**

WHEREAS, Wisconsin Medical Society, Inc. ("Seller") is the owner of the property located at 330 and 342 East Lakeside Street in the City of Madison, Dane County, Wisconsin (the "Property"), as legally described on the attached Exhibit A and depicted on attached Exhibit B consisting of approximately 3.65 acres; and

WHEREAS, the Property is subject to a right of first refusal to purchase benefitting the City of Madison, a Wisconsin municipal corporation ("Buyer") since 1996; and

WHEREAS, the 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 adopted 2018 Park and Open Space Plan includes the recommendation to "Improve Public Access to Lakes;" and

WHEREAS, the acquisition of the Property will add nearly 450 linear ft of shoreline for public access to Lake Monona; and

WHEREAS, the addition of the Property to Olin Park will provide expanded opportunities for recreational uses in this heavily used park; and

WHEREAS, the Parks Division is interested in buying the Property to assemble with Olin Park; and

WHEREAS, the addition of the Property has long been a goal of the Parks Division and the City of Madison; and

WHEREAS, the Property is improved with a 41,026 square foot building currently used for office purposes (the "Building"); and

WHEREAS, the Parks Division, along with Facilities Management staff, will evaluate the Building for potential reuse of some or all of the building consistent with PR zoning, including any conditional uses; and

WHEREAS, the contemplated purchase price of \$5,500,000 is about 10% above the appraised value which

was reviewed and approved by the City of Madison Office of Real Estate Services; and

WHEREAS, the Seller currently has lease agreements for space in the Building with Wisconsin Health Information Organization, Inc. and Nuance Transcription Service, Inc. (the "Tenants"); and

WHEREAS, the Buyer and the Seller (the "Parties") have a signed Letter of Intent, which substantially outlines the proposed terms of a Purchase and Sale Agreement (the "Agreement") for the acquisition of the Property; and

WHEREAS, the Parties have tentatively agreed that the Agreement will include a right for the Seller to leaseback the Property from the Buyer and enter into subleases with the Tenants to allow time for the Seller to identify and relocate to a replacement property and terminate the Tenant's leases.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of an Agreement with the Seller for the purchase of the Property on the following terms and conditions:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Special Warranty Deed (the "Deed"), fee simple ownership of the Property, including all improvements and fixtures located thereon and all appurtenances thereto.
2. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Seller or the Buyer, as indicated on the signature page.
3. Conveyance. The Buyer shall purchase and the Seller shall sell and convey by Special Warranty Deed (the "Deed") fee simple title to the Property, including all improvements located thereon and all appurtenances thereto free and clear from all liens and encumbrances excepting the following: municipal and zoning ordinances, the "Permitted Exceptions" (defined below), and a restriction on the use of the Property for thirty (30) years following the date of sale, to uses in accordance with PR zoning as described in Madison General Ordinance 28.095, including any conditional uses.
4. Purchase Price. The total purchase price for the Seller's interest in the Property (the "Purchase Price") shall be Five Million Five Hundred Thousand Dollars (\$5,500,000). The Purchase Price shall be payable in cash at Closing, subject to the adjustments and prorations herein provided.
5. Earnest Money. Within ten (10) business days of the Effective Date, the Buyer shall deposit with the Title Company, as defined below, Five Hundred Fifty Thousand Dollars (\$550,000) 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 7, 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 4.
6. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Buyer's Contingency Period as described in Paragraph 7, the Seller will reproduce at the Seller's expense and send to the Buyer at the Buyer's office copies of:
  - a. all environmental studies, reports, permits, applications and remediation plans or assessments of the Property including, but not limited to, asbestos, lead-based paint inspections and other hazardous waste inspections related to the physical condition of the improvements in the Seller's possession or control;
  - b. all building plans, floor plans, site plans, surveys, CAD files, civil plans, structural studies, MEP

(mechanical, electrical or plumbing) reports, or assessments related to the condition of the improvements on the Property in the Seller's possession or control;

c. all lease agreements and service contracts.

7. 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 recommends a Phase 2 report, then Buyer must notify Seller in writing to extend the Buyer's Contingency Period by an additional 30 days 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 obtaining various inspections and testing of the Property and any improvements located thereon. The Buyer, at its sole expense, may obtain an inspection of any buildings and related improvements located on the Property, a Phase 1 or 2 environmental site assessment of the Property 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 obtaining budget authorization from the Common Council of the City of Madison for the purchase of the Property.

c. Master Lease. A Master Lease agreement will be negotiated during the Buyer's Contingency Period for 330 E. Lakeside Street in the event Seller wants to exercise the Lease Back option after Closing substantially on the terms outlined below in Paragraph 12. Other terms therein shall include standard leasing terms and conditions for the City of Madison subject to mutual negotiation between Buyer and Seller.

8. Access to Property.

a. Inspections & Testing. The Buyer and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing anticipated per the Buyer's Contingencies including, but not limited to, a Phase 1 or 2 environmental assessment 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's access to, and inspection of, the Property shall be at Buyer's sole risk and expense and Seller shall have no responsibility therefor. 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 several times prior to entering into the Agreement and during the Buyer's Contingency Period, at times agreed to by the Seller, for the purpose of familiarizing Buyer with the facilities and determining usefulness of the office space for the Buyer's needs. Buyer will provide Seller with notice before entering the building.

9. 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.

10. Leasing/Service Contracts.

a. New Leases/Service Contracts. The Seller shall agree that it shall not enter into any new lease, service contract or rental agreement for the Property, or any portion thereof, during the Buyer's Contingency Period and through the date of Closing, without the prior written consent of the Buyer.

b. Lease Termination. The Seller represents that its current lease agreement with Wisconsin Health Information Organization, Inc. (WHIO) for space in the building located on the Property includes an early termination clause. In the event the Seller does not want to enter into a Master Lease (as defined below), then Seller shall exercise said termination clause as necessary to have WHIO's lease terminated on or before the date of Closing.

Buyer understands that the early termination clause with Nuance Transcription Service, Inc. requires Seller to provide six (6) months' prior written notice to terminate (the "Termination Notice"). In the event Seller elects not to enter into a Master Lease, Seller agrees to provide such Termination Notice immediately upon Buyer's waiver of all its contingencies and the Closing shall be extended to accommodate the foregoing Termination Notice.

c. Service Contract Termination. In the event the Seller does not enter into a Master Lease (as defined below), then Seller shall terminate any service or rental contracts by Closing.

11. Title Insurance. Seller shall obtain, at the Seller's expense, a title commitment from First American Title Insurance Company (the "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 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. Lease Back. Seller will have the right, but not the obligation, to lease back (the "Lease Back") the 330 E. Lakeside Street parcel from the date of Closing for seven (7) additional months (the "Lease Back Term").

If Seller exercises its right to Lease Back, then Seller shall: (i) provide written notice to the Buyer during the Buyer's Contingency Period; and (ii) shall execute at Closing a Master Lease that substantially contains the following terms, in addition to the City's standard terms for leasing property (the "Master Lease"):

a. Rent: No base rent shall be payable during the Lease Back Term.

b. Subleases: Seller shall be permitted to continue its leases with WHIO and Nuance Transcription Service, Inc (the "Existing Tenants") as subleases ("Subleases"). The Existing Tenants that sublease during the Lease Back collectively are defined as the "Sub-Tenants". Any subleases with Sub-Tenants cannot extend beyond the Lease Back Term; accordingly Seller will need to provide written notice to terminate the leases per the notice period of those leases.

Seller agrees to use commercially reasonable efforts to request any Sub-Tenants to provide the Buyer with a certificate of insurance naming Buyer as an additional insured on Existing Tenants' Commercial General Liability policy. Such policy shall have a minimum per occurrence limit of \$1,000,000. Seller further agrees to use commercially reasonable efforts to request any Sub-Tenants comply with the Buyer's standard indemnification requirements.

Existing Tenants' security deposits per the current leases shall be the property and responsibility of the Seller.

- c. Expenses: The Seller shall pay for all operating and maintenance expenses relating to its, and any Sub-Tenants, use of the portion of 330 E. Lakeside Street being leased during the Lease Back Term including, but not limited to: property taxes, personal property taxes, lighting, electrical, heating, air conditioning, water and sewer service, storm water and urban forestry utility charges, security, garbage removal, window washing, parking lot, pest control, personal property insurance, janitorial, signage and administration. In addition, Seller shall pay for the installation, use and maintenance of all data, computer and telephone services and any other specialized equipment (i.e. card reader access system) in the building located on 330 E. Lakeside Street. For clarity, the parties intend to exclude 342 E. Lakeside Street from the Lease Back to Seller, and Buyer shall pay for all costs, including property taxes, related to 342 E. Lakeside Street, if any.

Buyer shall only be responsible for the following operating costs: snow removal, lawn and landscaping maintenance, and special assessments. Buyer will carry liability insurance covering its own actions and property insurance on the building in an amount of its own selection. Any capital expenditures over three thousand dollars (\$3000), including repairs or replacements of the roof, foundation, mechanical systems or structural elements of the Main Building, shall be the responsibility of, and made in the sole discretion of, Buyer. For clarity, it is agreed by the parties that Seller and its Sub-Tenants shall have no rights under the Master Lease to demand or require that Buyer perform any repairs or replacements of a capital nature described in the foregoing sentence. In addition, the Buyer expressly notifies Seller that during the Lease Back Term Buyer does not intend, and Buyer will be under no obligation, to make any capital expenditures, including repairs or replacements of the roof, foundation, mechanical systems or structural elements of the West Wing. Notwithstanding the foregoing, in the event a cooling or heating unit in the building fails, then Seller can immediately terminate the Master Lease and Subleases or pay at its expense to rent a temporary chilling or heating unit for the building.

- d. Condition: The Seller shall accept the Property on an "as-is" basis and shall return it at the end of the Lease Back Term in the same or similar condition normal, wear and tear excepted.
- e. Liens: The Seller shall not permit any construction lien or leasehold mortgage, or similar, to be filed, or if filed, to remain uncontested, against the fee of the Property, by reason of work, labor, services or materials supplied or claimed to have been supplied to the Seller and shall remove any liens before the end of the Lease Back Term, as applicable.
- f. Removal and Disposal of Personal Property: Upon the expiration or termination of the Lease Back Term, as applicable, the Seller shall remove all personal property from the Property.
- g. Security Deposit: At Closing, Twenty-Five Thousand Dollars (\$25,000) (the "Security Deposit") of the Purchase Price will be held in an escrow account with the Title Company (defined below) if the Seller decides to exercise the Lease Back. The Security Deposit will be held during the Lease Back Term, and shall be used to cure any damages to the Property caused by Seller and/or default by Seller under the Lease.

- h. Termination: The Seller shall have the right to terminate the Master Lease during the Lease Back Term, as applicable, by providing Buyer with at least 30 days' written notice. On the termination date, Seller shall terminate all sublease agreements with the Sub-Tenants and any service agreements. The termination shall only be valid if all service agreements and Sub-Tenants' leases expire at the end of the 30 day written notice period and all service contracts
- i. Building Supplies: The Seller shall leave any remaining supplies relating to the building's mechanical, electrical and plumbing systems at the end of the Lease Back Term, as applicable.

13. Closing.

- a. In the event Seller elects not to enter into a Master Lease, Closing shall be extended to accommodate the foregoing Termination Notice described in Paragraph 10(b).

In the event Seller enters into a Master Lease to be signed at Closing, then Closing shall occur within ten business (10) days after the waiver or satisfaction of the Buyer's Contingencies listed in Paragraph 7 at the office of the Title Company, unless the parties agree in writing to select a different location or extend the date of Closing to a later date.

- 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 the Permitted Exceptions.
- 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.

Real estate taxes for the Property shall be prorated between the Buyer and Seller as of the Date of Closing based upon the latest known assessment and latest known mill rate. At Closing, Seller shall credit Buyer for any unpaid 2018 real estate taxes and prorated 2019 real estate taxes for the Property. If at Closing, the Property has not been assessed for 2019, then the proration shall be based on the 2018 assessed value and the last known mill rate. The 2019 credit is based on the number of days in 2019 prior to the Closing date divided by 365 days times the product of the 2018 assessed value and the last known mill rate.

- d. In addition, in the event the Seller exercises the Lease Back of the 330 E. Lakeside Street parcel, then Seller is responsible for real estate taxes for the 330 E. Lakeside Street parcel and shall provide a credit at Closing, to be held in escrow, as follows: if the 330 E. Lakeside Street parcel has not been assessed for 2019, then the proration for the Lease Back Term shall be based on the 2018 assessed value and the last known mill rate for the 330 E. Lakeside Street parcel. The 2019 credit is based on the seven months (or 210 days) divided by 365 days times the product of the 2018 assessed value and the last known mill rate. The Buyer shall receive a monthly distribution from the escrow based on the above formula during the Lease Term. In the event Seller terminates the lease early in accordance with either Paragraph 12(c) or 12(h), any remaining funds in escrow under this paragraph shall be refunded to Seller.

The Buyer shall be responsible for all real estate taxes with respect to the Property for 2019 after the Closing date in the event the Seller does not exercise the Lease Back. If the Seller exercises the Lease Back then Buyer will be responsible for: (i) 2019 taxes after the

Lease Back Term for 330 E. Lakeside Street parcel and (ii) 2019 taxes after Closing for the 342 E. Lakeside Street parcel.

- 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 date of Closing. The Buyer shall be responsible for all such expenses with respect to the Property payable after the Closing date.
- f. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.
- g. The Seller shall pay any and all broker commissions or fees due in connection with the sale or Lease Back of the Property.
- h. The Seller shall terminate all service contracts and leases with the Existing Tenants, unless Seller enters into the Lease Back.
- i. The Seller shall leave any remaining supplies relating to the building's mechanical, electrical and plumbing systems.
- j. The Seller will assign over any remaining warranties relating to the Property to Buyer.
- k. The Buyer shall pay all closing costs and any closing escrow fees charged by the Title Company to facilitate Closing.

BE IT FURTHER RESOLVED that the 2019 Adopted Parks Division Capital Budget be amended to include up to \$5,550,000 in new expenditure authority funded from the Citywide Parkland Impact Fee Funds; and

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.