



## Legislation Text

File #: 24359, Version: 2

### Fiscal Note

This resolution would amend 2011 Parks Capital Project #4 "Parkland Acquisition" by the addition of \$867,000 of funding from SI 32 "Citywide Parkland Development Fee", to be used for the purchase of property related to the expansion of Merrill Springs Park. The SI 32 fund has sufficient cash reserves for this acquisition. A total of \$1,121,120 was available in the fund at the end of 2010. A further \$556,196 of revenues, mostly from Park Development Fees, are anticipated in 2011. Other expenditures of \$626,105 are expected in 2011, including \$450,000 for Bearly Square. The projected remaining balance of \$1,051,211 would therefore be more than adequate to cover the new project costs of \$867,000 for the Margetis property.

### Title

SUBSTITUTE Authorizing the execution of an Offer to Sell Real Estate between the City of Madison and the Mary K. Margetis Trust for the purchase of a lot located at 5100 Spring Court for the expansion of Merrill Springs Park and authorizing the amendment of the 2011 Parks Capital Budget for the acquisition.

### Body

Merrill Springs Park is located along the eastern edge of Lake Mendota at 5102 Spring Court, providing spectacular views of Lake Mendota. The park was dedicated to the Madison Park & Pleasure Drive Association "for park purposes" as part of the development of the Spring Harbor subdivision in 1910. Madison Park & Pleasure Drive Association conveyed its properties to the city in 1937. The current area of the park is 0.28 acres.

The City's legacy of acquiring lakefront property for the enjoyment and general welfare of the public took root in the 1890's, initiated by the philosophy of John Olin who during his tenure established 8 miles of public water frontage. For the past 120 years, the City has continued his efforts through implementing his suggestions from *Madison a Model City* to secure for public use the most important lake frontages with a view to the formation of a "Four Lakes District". In the spirit of this legacy, the City's Common Council adopted a resolution on March 28, 1972 that resolved that when property along Madison's lakeshores is available that the City investigates the desirability and feasibility of acquiring the property and, if deemed appropriate secure an offer to acquire the property for consideration by the Common Council.

The Mary K. Margetis Trust owns a lot located at 5100 Spring Court (the "Property") and has offered to sell the Property to the City. The Property totals 15,214 square feet or 0.35 acres. The Property has frontage on Lake Mendota and abuts Merrill Springs Park. The Office of Real Estate Services has negotiated terms with the Seller for the acquisition of the Property. The purchase price is supported by an appraisal obtained by the City.

The acquisition of the Property would facilitate the expansion of Merrill Springs Park and help satisfy parkland deficiencies that have been specifically identified in this neighborhood in the 2005-2010 Park and Open Space Plan.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute an Offer to Sell Real Estate ("Offer") with the Mary K. Margetis Trust ("Seller") for the purchase by the City of Madison ("Buyer") of a lot owned by Seller located at 5100 Spring Court (the "Property"), as legally described below and shown on the attached exhibit, on the following terms and conditions:

1. Properties. Seller hereby agrees to convey to Buyer and Buyer hereby agrees to acquire from Seller the Property and all improvements located thereon and all appurtenances, upon the terms and

conditions set forth herein.

2. Purchase Price. The purchase price for the Property is Eight Hundred Sixty-One Thousand Dollars (\$861,000) ("Purchase Price") and shall be paid as follows: Buyer shall pay Eight Hundred Sixty-One Thousand and 00/100 Dollars (\$861,000) in cash or a cash equivalent at closing, subject to closing prorations and credits. The parties acknowledge and agree that the Purchase Price was established by an appraisal commissioned by Buyer and accepted by Seller dated March 7, 2011 establishing this value as the fair market value for the Property.
3. Personal Property. Buyer acknowledges and agrees that no personal property will be conveyed in this transaction from Seller to Buyer.
4. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties in connection with Buyer's purchase of the Property, and no others, express or implied, which representations and warranties shall be true as of the closing date hereof and shall survive the closing of this transaction for a period of one (1) year:
  - a. Seller has the authority necessary to enter into this Offer and comply with Seller's obligations hereunder;
  - b. There are no pending or, to Seller's knowledge, threatened condemnation or eminent domain proceedings which would affect the Property;
  - c. There are no agreements between Seller and any other party which relate to the Property that have not been disclosed by to Buyer;
  - d. Until the closing date, the Property will be maintained in substantially the same condition as it is in on the date of this Offer, subject to ordinary wear and tear and casualty damage; and
  - e. There is no litigation pending or, to Seller's knowledge, threatened which would affect the Property or the use thereof by Buyer.
5. Title Contingency. Promptly after the Effective Date, Seller shall deliver or cause to be delivered to Buyer a current commitment (the "Commitment") for an ALTA owner's title insurance policy for the Property in the amount of the total purchase price issued by a title agent selected by Seller using a nationally recognized title insurance underwriter ("Title Company"), together with a gap endorsement and copies of the instruments listed in the schedule of exceptions in such Commitment. Buyer shall have ten (10) days after receipt of the Commitment to deliver to Seller in writing any objection to a matter shown on the Commitment which materially affects the Property or Buyer's use of the Property ("Title Objections"). If Buyer fails to deliver timely notice of Title Objections to Seller, Buyer shall be deemed to have fully accepted the Commitment and all matters disclosed therein. If Buyer timely delivers Title Objections, Seller shall have five (5) days after receipt of Buyer's objection notice to notify Buyer in writing what, if anything, Seller shall do to cure the Title Objections. Failure of Seller to respond within said period shall indicate that Seller elects not to cure the Title Objections. Seller shall have no obligation to cure any Title Objection or incur any expense with respect thereto. If Seller elects not to cure one or more of the Title Objections, Buyer shall have five (5) business days to deliver notice to Seller terminating this Offer and the parties shall have no further obligations hereunder except those provisions that expressly survive. If Seller pursues a cure and is unable to cure a Title Objection by the closing date, then Buyer shall have the option to either terminate this Offer and the parties shall have no further obligations hereunder except those provisions that expressly survive or close on the purchase of the Property with no Purchase Price reduction, in which case Buyer is deemed to have accepted any uncured Title Objections and waived any rights against Seller relating thereto.

Notwithstanding anything to the contrary herein, the following matters shall be deemed "Permitted Exceptions" and Buyer shall have no right to object to any of said matters on the Commitment:

- a. municipal and zoning ordinances and agreements entered under them, building and use restrictions and covenants, and State and/or Federal statutes and regulations;
- b. recorded easements for the distribution of utility and municipal services;
- c. property taxes and special assessments levied in the year of closing and subsequent years;
- d. such other matters as disclosed by the Commitment and waived or deemed waived by Buyer pursuant to this Section 5.

At closing, Seller shall cause the Title Company to issue a current ALTA owner's title insurance policy in the amount of the Purchase Price of the Property insuring Buyer as the fee simple owner of the Property as of the date of recording the deed, subject to the Permitted Exceptions ("Title Policy").

6. Inspection Contingency. Promptly after the Effective Date, Seller shall make available to Buyer any and all environmental studies, permits, applications, remediation plans or assessments of the Property in Seller's possession or control for the Property. Buyer, at its sole expense, may obtain an inspection of the Property and related improvements located on the Property and/or a Phase I environmental assessment of the Property. Buyer shall not have the right to conduct any sampling of the water, soil, air or improvements without Seller's express prior written consent. Buyer shall have ten (10) days from the Effective Date to terminate this Offer by written notice to Seller resulting from Buyer's objection to any matter shown in an inspection report or Phase I environmental assessment, which materially affects the Property or any improvements located thereon or Buyer's use of the Property. If Buyer does not terminate this Offer hereunder, then Buyer is deemed to have waived this inspection contingency and any right to object to the condition of the Property or any improvements located thereon. In no event shall Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property or any improvements located thereon.

7. No Representations or Warranties; AS-IS Condition.

- a. Buyer is hereby purchasing the Property in "AS-IS, WHERE-IS" condition and "with all faults", and agrees that it relies upon no warranties, representations or statements by Seller, or any other persons for Seller, in entering into this Offer or in closing the transaction described herein, except for the express representations and warranties set forth in Section 4 above. 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 title and inspection contingencies set forth in Sections 5 and 6 above. In closing and completing this transaction, Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of Seller or its agents or employees except those expressly set forth in Section 4 above.
- b. Except for the express representations and warranties set forth in Section 4 above, Seller makes no warranties, representations or statements whatsoever, express or implied, concerning or relating to the Property, including without limitation: the income or expenses of the Property; zoning and building codes and other similar restrictions; availability or cost of utilities; the environmental condition of the Property; the presence or absence of any hazardous substances, hazardous materials, petroleum, or any substances regulated by federal, state or local law in, on or under the Property; compliance of the Property with any law, regulation,

ordinance or similar requirement, including without limitation the Americans with Disabilities Act; or the physical condition of the Property or any improvements thereon. Buyer acknowledges that no agents, employees, brokers or other persons are authorized to make any representations or warranties for Seller.

- c. Buyer (and any party claiming through or under Buyer) hereby agrees that following the closing, Seller shall be fully and finally released from any and all claims or liabilities against the Seller relating to or arising on account of the condition of or title to the Property, including without limitation, any matters specifically referenced in this Offer.
- d. Section 7(a) through (c) shall survive the closing of this Offer.

8. Closing.

- a. The closing of this transaction shall take place after expiration of all Buyer's contingencies set forth in this Offer but no later than December 31, 2011, at the offices of Title Company, or at such other time and place as may be agreed upon by Buyer and Seller.
- b. Unless other contingencies are expressly granted in this Offer, Buyer's contingencies include only the title and inspection contingencies set forth in Sections 5 and 6 above.
- c. At closing, Buyer shall deliver to Title Company wired funds or other immediately available funds in the amount of the Purchase Price, as adjusted for any prorations and closing costs provided for herein, and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Property is located or otherwise required by Title Company to issue Title Policy.
- d. At closing, Seller shall deliver to Title Company a Warranty Deed conveying the Property to Buyer, subject only to the exceptions permitted herein and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Property is located or otherwise required by Title Company to issue Title Policy.
- e. All prorations required hereunder shall be computed as of the date of closing.
- f. Possession of the Property shall be delivered to Buyer on the closing date.
- g. Buyer shall pay for recording the deed.
- h. Seller shall pay the title insurance premium for Title Policy to be issued to Buyer and gap endorsement charges and for 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 Offer.
- i. All Title Company closing charges shall be shared equally by Seller and Buyer.
- j. All other closing costs, including without limitation transfer taxes and other recording fees, shall be allocated as customary in the state in which the Property is located.

9. Taxes. All general real property taxes payable with respect to the Property for the year of closing shall be prorated between Buyer and Seller as of the closing date. If the precise amount of taxes payable for the year of closing cannot be ascertained, proration shall be computed on the basis of taxes on the Property for the immediately preceding tax year.

10. Special Assessments. Any and all special assessments, area assessments, connection charges, interceptor charges or any other charges due and payable to any municipality or utility with regard to the Property as of the date of closing shall be paid by Seller at closing.
11. Condition of Sale. As a consideration of the sale of the Property, Buyer agrees to construct, at its sole cost, a split log fence along the common property line of the Property and the property located at 5050 Lake Mendota Drive, Madison, Wisconsin, as shown on the attached exhibit. Said fence shall be constructed by Buyer by September 1, 2012 or at such other date as may be agreed upon by Buyer and Seller. The fence will be owned and maintained by the City's Parks Division.
12. Preservation Easement. A view preservation easement shall be recorded at or prior to closing, providing for the preservation of the view of Lake Mendota from Lot 1, Certified Survey Map No. 12633, over Lot 2, Certified Survey Map No. 12633, including restrictions on the construction of structures and the planting of trees on Lot 2 which obstruct Lot 1 owner's view of Lake Mendota, and authorizing the Lot 1 owner to trim trees on Lot 2, at the Lot 1 owner's expense, to preserve the view of Lake Mendota as it currently exists.
13. Casualty. If the Property is damaged by fire or other casualty after Effective Date of this Offer but prior to the closing date, such that the cost to restore the Property to its condition immediately prior to the casualty is in excess of five percent (5%) of Purchase Price, Buyer shall have the option to:
  - a. proceed to close this transaction on the terms contained herein and receive an assignment of the insurance proceeds (or the right to receive the same, if they are not received before closing) payable to Seller as a result of the casualty; or
  - b. terminate this Offer by written notice delivered to Seller within ten (10) days after Buyer receives notice of the casualty.
  - c. If the Property is damaged by fire or other casualty prior to the closing date and the cost of restoration does not exceed five percent (5%) of Purchase Price, this Offer shall remain in full force and effect upon the terms stated herein and at closing Seller shall assign to Buyer the insurance proceeds (or the right to receive the same, if they are not received before closing) payable to Seller as a result of the casualty.
14. Condemnation. If the Property is condemned under the power of eminent domain, is the subject of a threatened condemnation, or is conveyed to a condemning authority in lieu of condemnation, Seller shall notify Buyer in writing of the threat, condemnation or conveyance within three (3) business days of its occurrence. Buyer shall within ten (10) days of the notice have the option of (a) proceeding with the closing and receiving the award or condemnation payment (or an assignment thereof, if the same is not received by closing), or (b) canceling this Offer.
15. Access to Property. From the Effective Date to the date ten (10) days thereafter, Buyer and Buyer's authorized agents and contractors shall be permitted access to the Property at reasonable times for the purpose of conducting any of the following at Buyer's election: a Phase I environmental assessment of the Property and/or a physical inspection of the Property and related improvements located on the Property. This Section 15 does not authorize Buyer or Buyer's authorized agents or contractors to conduct any sampling on the Property.
16. Default. If Buyer defaults in the full and timely performance of any of its obligations hereunder, Seller shall be entitled to terminate this Offer. If Seller defaults in the full and timely performance of any of its obligations hereunder, Buyer, as its only remedies, may elect to either terminate this Offer or seek

specific performance.

17. Seller 1031 Exchange. Seller, at its option, may structure the sale of the Properties as a tax-deferred exchange (the "Exchange") pursuant to Section 1031 of the Internal Revenue Code. If Seller shall elect to undertake an Exchange, the following terms shall apply:
- a. Seller, at its option, may assign its rights in and delegate its duties (in part or in whole) under this Offer, as well as the transfer of its interests in the Property, to an Exchange Accommodator, selected by Seller. Seller shall provide Buyer with written notice of any such assignment.
  - b. Buyer agrees to cooperate with Seller in connection with the Exchange, by executing documents of exchange (including, but not limited to, escrow instructions and amendments to escrow instructions).
  - c. The transaction contemplated by this Offer shall timely close in accordance with the terms contained in this Offer, notwithstanding any failure, for any reason, of the consummation of the Exchange.
  - d. All representations, warranties, covenants, and indemnification obligations of Seller to Buyer shall inure to the benefit of the Buyer, notwithstanding the Exchange.
18. Real Estate Commissions. Seller hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction. Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all loss, cost or expense from any claim for real estate commission made by any agent, broker or firm engaged by Seller in connection with the Property or this transaction. Buyer hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction.
19. Assignment. Neither party may assign their rights to this Offer without the prior written consent of the other party.

BE IT FURTHER RESOLVED that the 2011 Parks Capital Budget Project #4, "Parkland Acquisition" be amended by the addition of expenditure authorization of \$867,000.00 for the acquisition of the Properties funded with City parkland dedication fees. The acquisition costs include the following: \$861,000 for the Purchase Price, \$3,000 for a Phase I Environmental Assessment, \$3,000 for miscellaneous closing costs including the City's portion of pro-rated real estate taxes, recording and settlement fees.

BE IT STILL FURTHER RESOLVED that the City Park Division is authorized to pursue additional funding for the purchase of the Property from the Dane County Conservation Fund, State Stewardship Grant fund and other funding sources.

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to execute, deliver accept and record any and all documents and take such actions as shall be necessary or desirable to accomplish the purpose of this resolution in a form approved by the City Attorney.

#### Legal Description

Lot 2, Certified Survey Map No. 12633 as recorded in Dane County Register of Deeds in Volume 79, Page 236-239 of Certified Surveys, as Document No. 45048885, City of Madison, Dane County,

Wisconsin.

5100 Spring Court  
251-0709-184-0123-6251-0709-184-0123-6