Legislation Details (With Text)

File #:	65070	**Version:**	1	**Name:**	12095 - Acquisition for Cedar Street Extension
Type:	Resolution			**Status:**	Passed
File created:	4/13/2021			**In control:**	Economic Development Division
On agenda:	5/18/2021			**Final action:**	5/18/2021
Enactment date:	5/24/2021			**Enactment #:**	RES-21-00363

Title: Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and James J. Luscher for the City's acquisition of the property located at 1401 Beld Street for the Cedar Street construction project. (13th AD)

Sponsors: Tag Evers, Sheri Carter

Indexes:

Code sections:

Attachments: 1. PC Locator Maps.pdf, 2. 12095 Resolution Locator Map.pdf

Date	Ver.	Action By	Action	Result
5/18/2021	1	COMMON COUNCIL	Adopt	Pass
5/10/2021	1	FINANCE COMMITTEE	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
4/26/2021	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
4/20/2021	1	FINANCE COMMITTEE	Referred	
4/20/2021	1	COMMON COUNCIL	Refer	Pass
4/13/2021	1	Economic Development Division	Referred for Introduction	

Fiscal Note

The proposed resolution authorizes the execution of a Purchase and Sale Agreement between the City of Madison and the owner of the property. The estimated acquisition cost is $207,300 for the parcel plus $15,000 in additional real estate costs for environmental site assessment, appraisal, miscellaneous closing costs, and staff time for a total amount of $222,300. The proposed property acquisition is funded by TID 42 (Wingra) and was included in the 2020 Adopted Capital Budget. No additional City appropriation is required.

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and James J. Luscher for the City's acquisition of the property located at 1401 Beld Street for the Cedar Street construction project. (13th AD)

Body

WHEREAS, James J. Luscher ("Seller") is the owner of the property containing 5,536 square feet of land and single family home improvements, located at 1401 Beld Street legally described as Lot One (1), and the Westerly 10 feet in width of Lot Two (2), Block Six (6), Woodlawn Addition to South Madison, in the City of Madison, Dane County, Wisconsin ("Property"); and

WHEREAS, the City of Madison ("City") desires to purchase the Property for the Cedar Street extension project, as the removal of the single-family home will allow for the realignment of Beld Street at the intersection of S. Park Street and Cedar Street. The realignment of Beld Street will improve the overall safety of the Cedar and S. Park Street intersection; 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 $207,300, which was negotiated based on an appraisal reviewed and approved by the City's Office of Real Estate Services; and

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, substantially on 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 251/0709-264-0510-5, located at 1401 Beld Street, Madison, Wisconsin ("Property"), legally described as follows:

      Lot One (1), and the Westerly 10 feet in width of Lot Two (2), Block Six (6), Woodlawn Addition to South Madison, 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 Two Hundred Seven Thousand Three Hundred and 00/100 Dollars ($207,300). 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. 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. 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.

5. 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.

6. 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 completed the Due Diligence Period, as generally described in Paragraph 7.

7. Due Diligence Period. The Buyer shall have sixty (60) 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

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Agreement shall terminate immediately.

a. Inspections and Testing. During the Due Diligence Period, 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 Environmental Site Assessment report ("ESA") and related testing, soils testing and any other inspections or testing deemed necessary by the Buyer. In the event Buyer's Phase 1 ESA recommends a Phase 2 ESA, the Buyer may notify Seller in writing of its desire to extend the Due Diligence Period by up to 60 days, if necessary to conduct such investigation. The Due Diligence period may then be extended as mutually agreed to by the Parties. If the Parties are unable to agree on an extension of the Due Diligence Period, the Buyer may declare the Agreement null and void by providing notice as set forth in Paragraph 13. 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.

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

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 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.

8. 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 as provided in Paragraph 7 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.

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, 2021 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.

10. Title Insurance. Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing, a title commitment from First American Title 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. 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 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.

11. 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.

12. Closing.

a. The Closing Date shall occur on or before ten (10) 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. If the Parties are unable to schedule Closing on or before the Closing Date, the Parties shall have the option to proceed to Closing on a date that is mutually agreed to by both Parties, or if one or both Parties do not desire to reschedule Closing for a later date, either Party may declare the Agreement null and void by providing notice as set forth in Paragraph 13.

b. If the Parties agree to a later Closing Date, the 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

c. The Seller agrees to execute and deliver to the Buyer at Closing the Deed prepared by the Buyer, 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.

d. 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.

e. 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 2021 real estate taxes for the Property, as the Buyer will be responsible for the payment of the 2021 tax bill received at the end of said year.

f. 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.

g. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.

h. Title Company shall prepare and deliver at Closing the receipt for the Real Estate Transfer Return required by the Wisconsin Department of Revenue.

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.

13. Notices. All notices required or permitted to be given hereunder shall be given to the Parties at the following addresses if sent via mail, or to the email addresses if provided via email:

BUYER: City of Madison
Economic Development Division
Office of Real Estate Services
Attention: Manager
Post Office Box 2983
Madison, WI 53701-2983
lvest@cityofmadison.com

SELLER: James Luscher
1401 Beld Street
Madison, WI 53715

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.

14. 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 the Agreement or seek specific performance.

15. Successors and Assigns. The provisions of the 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.

16. Severability. If any provision of the 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.

17. Counterparts and Transmittal of Signatures. The Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same Agreement. Signatures on the Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and the 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 the 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 the Agreement, fully executed, shall be as valid as an original.

18. Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of or applicable to the State of Wisconsin.

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.