



Legislation Text

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Fiscal Note

The acquisition costs include the following: \$24,650 for the Purchase Price, \$3,000 for a Phase I and/or 2 Environmental Assessments, and \$2,000 for miscellaneous closing costs including the City's portion of prorated real estate taxes, recording and settlement fees. Budget authority is available in the Bikeways project within the Engineering Account CS53-58110-810375-00-53W1552-00000000-00000000.

Title

Authorizing the execution of an Purchase and Sale Agreement between the City of Madison and Badger Mill Creek LLC for the purchase of Outlot 5 and 6, Second Addition to Hawk's Creek subdivision, located at 2554 - 2556 Jeffy Trail for expansion of open space and storm water management purposes.

Body

The City of Madison recently purchased an improved residential parcel containing 9.48 acres located at 7960 Raymond (the "Property"), from the Madison Audubon Society Inc. The Property is also located adjacent to the Second Addition to Hawk's Creek subdivision. The Property was purchased for public open space and the expansion of the Ice Age Junction Trail, the extension of Jeffy Trail, and future residential development. A preliminary plat called the Wolfe Addition to Hawks' Creek encompasses the Property and is currently in early planning stages.

The Second Addition to Hawk's Creek plat includes Outlots 5 and 6 (the "Outlots") which are vacant and were intended for future development. Due to the aforementioned purchase, the Outlots are now located adjacent to the proposed Wolfe Addition to Hawk's Creek subdivision and an area designated for public open space and storm water management which has rendered the Outlots as undevelopable.

Due to the proximity of the Outlots to public open space and storm water management areas, the City Engineering Division has offered to purchase said the Outlots from the owners, Badger Mill Creek LLC, the developers of the Hawks' Creek subdivision. The intentions is to use the Outlots for expansion of open space and storm water management that is now part of the proposed plat of the Wolfe Addition to Hawk's Creek.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute a Purchase and Sale Agreement (the "Agreement") with Badger Mill Creek LLC (the "Seller") for the purchase by the City of Madison ("Buyer") of Outlot 5 and 6 of the Second Addition to Hawk's Creek located at 2554 and 2556 Jeffy Trail (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 Twenty Four Thousand Six Hundred and Fifty Dollars (\$24,650.00) ("Purchase Price") and shall be paid as follows: Buyer shall pay to Seller the amount of Twenty Four Thousand Six Hundred and Fifty and 00/100 Dollars (\$24,650.00) 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 appraisals commissioned by Buyer and Seller, the recent purchase price of the land for the Seller's adjacent subdivision, the City's purchase price of the former Audubon Society parcel, and were accepted by Seller on February 13, 2013 as establishing this

value as the fair market value for the Property.

3. 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.
4. Personal Property. Buyer acknowledges and agrees that no personal property will be conveyed in this transaction from Seller to Buyer.
5. 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.
6. Title Contingency. Promptly after the Effective Date, Seller shall deliver or cause to be delivered to Buyer, at the Buyer's expense, 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").

7. 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 a Phase I environmental assessment of the Property. Buyer shall not have the right to conduct any sampling of the water, soil, or air 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.

8. 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.

9. 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 15, 2013, 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 and in Section 11 below.

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.

10. 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.

11. 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 paid by Seller at closing.

12. Buyer Contingencies. The Buyer shall have thirty (30) days from the Effective Date (the “Buyer’s Contingency Period”) to satisfy or waive the following contingencies or to otherwise terminate the Agreement, unless extended as provided herein:

a. Environmental/Soils Testing. The Buyer obtaining, at its sole cost and expense, a phase 1 and/or phase 2 environmental assessments of the Property that are satisfactory, in the Buyer’s sole discretion, to the Buyer.

b. Soil Borings. The Buyer obtaining, at its sole cost and expense, soil borings that are satisfactory, in the Buyer’s sole discretions, to the Buyer.

The Buyer’s Contingency Period may be extended for an additional thirty (30) days by written agreement of the parties prior to expiration of the original Buyer’s Contingency Period.

13. 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.

14. Access to Property. Prior to closing, the Buyer and the Buyer’s authorized agents and contractors shall be permitted access to the Property for the purpose of conducting a Phase 1 and/or 2 environmental assessments of the Property; at reasonable times with at least twenty-four (24) hours written notice to the Seller.

15. 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.

16. 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, provided that such cooperation shall be at no out-of-pocket expense to the City, in connection with the Exchange, by executing documents of exchange (including, but not limited to, escrow instructions and amendments to escrow instructions), provided the City shall not act as an intermediary in the 1031 Exchange transaction.

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.

17. 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.
18. Assignment. Neither party may assign their rights to this Offer without the prior written consent of the other party.

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

Outlot 5 and 6, Second Addition to Hawk's Creek, City of Madison, Dane County, Wisconsin