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Fiscal Note

The proposed resolution authorizes the execution of a Purchase and Sale Agreement (PSA) between the City of Madison and the owner of the property located in the Town of Verona. The total acquisition costs are estimated to be $2,030,000 broken out as follows: $2,000,000 for the purchase price of the Real Estate, $25,000 for demolition costs, and $5,000 for miscellaneous closing costs (prorated taxes, filling fees, etc.) and Real Estate staff costs. This resolution also amends the Parks Division 2018 Capital Budget by appropriating up to $1,530,000 in Citywide Parkland Impact Fees to the Dykman Project (Parks Division Account No. 17355-51-110). An additional $500,000 of the acquisition costs shall be received from Dane County (authorized in a resolution to the Dane County Board of Supervisors).

Title

Amending the 2018 Adopted Parks Division Capital Budget and Authorizing the execution of a Purchase and Sale Agreement between Charles P. Dykman and Bonnie Dykman, and the City of Madison for the acquisition of 40 acres of vacant land located in the Town of Verona, Dane County, to extend the Ice Age Trail and create a park.

Body

WHEREAS, Chales P. Dykman and Bonnie Dykman (collectively, the “Seller”) own 40 acres of vacant land located in the Town of Verona, Dane County, Wisconsin, as legally described on attached Exhibit A and depicted on attached Exhibit B (the “Property”); and

WHEREAS, the Property is currently located within the Town of Verona and is identified in Peripheral Planning Area A, which is a “Group 1” planning area in the City’s 2006 Comprehensive Plan; and

WHEREAS, Planning Area A (“PPA-A”) includes the University Ridge Golf Course and lands extending to the west between Mid Town Road and McKee Road. Most of PPA-A was identified in the 1990 Peripheral Area Development Plan within a recommended Permanent Open Space district primarily to recognize the glacial features within the area and the potential for a greenspace separation area between Madison and the City of Verona; and

WHEREAS PPA-A recognizes that there are important glacial features within the area that are worth preserving as permanent open space, and an extension of the Ice Age National Scenic Trail should be provided across this area, connecting the trail segment within the University Ridge Golf Course with planned trail segments continuing northward along the terminal moraine; and

WHEREAS, the Seller wishes to contribute to the City of Madison’s (the “City”) conservation efforts and future expansion of the Ice Age National Scenic Trail by selling the Property to the City at a purchase price of $2,000,000.00, as determined by an appraisal completed by Landretti and Company, LLC.; and,

WHEREAS, Dane County has agreed to provide $500,000 to the City to help fund this land acquisition for the Ice Age National Scenic Trail and obtain a subsequent conservation easement over the Property from the City after the City’s acquisition of the Property from the Seller. Easement grants have been a requirement of previous land acquisitions when the County has contributed funding for City land acquisitions. Said easement to the County shall be approved under separate resolution to the City’s Common Council.

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 Charles P. Dykman and Bonnie Dykman,

for the City's purchase of 40 acres of vacant land conservation park 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 (the "Deed") fee simple title to 40 acres, more or less, of real property located in the Town of Verona, Dane County, Wisconsin, as legally described on attached Exhibit A and depicted on attached Exhibit B (the "Property"), conveying Seller's right, title and interest in and to the property.

2. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Parties when all required signatures are affixed on the signature page of this agreement.

3. Purchase Price. The total purchase price of the Seller's interest in the Property (the "Purchase Price") shall be Two Million Dollars and 00/100 ($2,000,000.00). The Purchase Price shall be payable in cash at the time of sale (the "Closing"), subject to the adjustments and prorations provided herein.

4. Conditions of Sale. Buyer agrees to the following conditions of sale, with a), b), c), and d) recorded as restrictive covenants on the property; these covenants will expire after thirty years from the closing date:

   a. Conservation Park. Following acquisition, Buyer shall designate the Property as a conservation park.

   b. Access. Buyer agrees to make the Property open and available for Town of Verona residents to the same degree that it will be open and available to City of Madison residents.

   c. Recognition Sign. Buyer agrees to install a sign providing information about the Dykman family's history with the Property. The Buyer shall install the sign in the newly created conservation park, at a mutually agreed upon location, and thereafter agrees to maintain the sign.

   d. Dogs. Dogs are not currently allowed in City conservation parks. It is therefore understood by the Buyer and Seller that no off-leash dogs shall be allowed on the Property.

   e. Annexation. The Buyer agrees that it shall not annex the Property into the City of Madison until after January 1, 2019.

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 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.

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 Section 12 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 sixty (60) days from the Effective Date (the "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 either Party determines, in its sole discretion, based upon the environmental

assessments allowed under Section 9, that the cost to remediate any environmental or other conditions found during the due diligence period exceeds $100,000, either Party may provide written notice to the other, of its or their desire not to purchase or sell the Property and the Agreement shall terminate immediately.

If neither Party provides 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.

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. Access to the Property. 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 or 2 environmental assessment of the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer will repair, at the Buyer's sole cost and expense, all damages caused by any of its assessments and inspections so that the condition of the Property is returned to as good or better condition as existed prior to the assessment(s) and inspections.

10. Third Party Access. The Buyer agrees to allow David Platt continued access to the Property for the purposes of bow hunting, with specific prohibition of gun use, through December 31, 2018. Access by Mr. Platt shall not be allowed after that date. It is understood by Buyer and Seller that after the Property is annexed into the City of Madison (which cannot occur until after January 1, 2019), that hunting on the Property will be prohibited under City of Madison Ordinances.

11. Existing Farm Lease. The Seller has entered into a farm lease with Guy and Laura Dreger (collectively, the "Lessee") with the term expiring on December 31, 2018. 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 ten (10) days of the Effective Date and prepare an assignment of lease for Buyer review.

12. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing a commitment from Preferred 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 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 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.

13. 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 12 shall be at the sole cost and expense of the Buyer.

14. 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 14 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.

15. 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 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; covenants and lease described in Section 11.

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 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 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.

16. 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 farm 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.

17. 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, including those conditions contained in Paragraph 4 a), b), c) and d) which will survive as provided in Paragraph 4.

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. 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.

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

f. Headings. The headings in this Agreement are meant for reference purpose only and shall not in any way affect the meaning or interpretation herein.

BE IT FURTHER RESOLVED that the 2018 Adopted Parks Division Capital Budget be amended to include up to $2,030,000 in new expenditure authority funded with $1,530,000 from the Citywide Parkland Impact Fee Funds and $500,000 in contributions from Dane County for the Dykman project; and

BE IT FURTHER RESOLVED that the City is authorized to accept $500,000 from Dane County to fund the acquisition, and the Mayor and City Clerk are authorized to execute any documents with Dane County that are required to secure the County's contribution, on a form and in a manner that has been approved by the City Attorney; 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 Mayor and City Clerk are hereby authorized to execute an annexation petition and all documents related thereto to cause the Property to be annexed to the City from the Town of Verona; and

BE IT FURTHER RESOLVED that the Office of Real Estate Services, Parks Division, and Planning Division are authorized to complete the annexation petition and file it with the Town of Verona and City Clerk.

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