



Legislation Text

File #: 62108, **Version:** 1

The proposed resolution authorizes the Parks Division to purchase property adjacent to O.B. Sherry Park located on Madison's east side. The total cost is \$258,000 (\$238k for acquisition and \$20k for misc. real estate and closing costs). This purchase will be funded by the Parkland Acquisition program included in the Parks Division capital budget. The 2020 Adopted Budget appropriated \$6.5m for 2020 acquisitions. The current project balance is \$6.5 million.

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Brian David Janssen and Kayley Hope Janssen for the City's acquisition of the property located at 3457 Milwaukee Street for the expansion of O.B. Sherry Park. (15th AD)

WHEREAS, Brian David Janssen and Kayley Hope Janssen (together, the "Seller") are the owners of the property containing 11,005 square feet of land and single family home improvements, located at 3457 Milwaukee Street and legally described on Exhibit A, attached hereto ("Property"); and

WHEREAS, the City of Madison ("City") desires to purchase the Property for the expansion of the adjacent O.B. Sherry Park, as the acquisition of properties in the vicinity of O.B. Sherry Park is a long term goal of the City's Parks Division; and

WHEREAS, the City's adopted Milwaukee Street Special Area Plan identifies the Property as parkland on the Future Land Use Map and includes the following statement: "The plan also includes the potential expansion of O.B. Sherry Park via acquisition of five residential properties on the Milwaukee Street between Leon Street and Fair Oaks Avenue. This would provide much improved visibility into, and awareness of O.B. Sherry Park with the intent of activating the park space. It's recommended the City pursue acquisition of these properties as owners elect to put them up for sale, rather than through an eminent domain process"; and

WHEREAS, the City's acquisition of the Property would provide expanded opportunities for recreational uses in this park, which is consistent with the City's adopted 2018 Park and Open Space Plan which includes the recommendation to "Acquire parkland to reduce parkland deficiencies and address increasing residential density"; 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 \$238,000, which was negotiated based on an appraisal approved by the City's Office of Real Estate Services.

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, subject to the following terms and conditions:

1. Property. 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 251/0710-054-0418-3, located at 3457 Milwaukee Street, Madison, Wisconsin ("Property"), legally described on Exhibit A, attached hereto.
2. Description. The Buyer agrees to purchase and the Seller agrees to convey the Property described herein, together with the building, improvements and fixtures located thereon under the terms and conditions hereinafter set forth.

3. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Parties, as indicated on the signature pages.
4. Purchase Price. The total purchase price for the Seller's interest in the Property ("Purchase Price") shall be Two Hundred Thirty Eight Thousand and 00/100 Dollars (\$238,000.00). 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.
5. Personal Property. The purchase of the Property does not include any personal property. The Seller shall remove any and all personal property from the Property before Closing, in particular any and all items that are suspected to contain hazardous materials.
6. Delivery of Documents. The Seller has provided the Buyer with a Real Estate Condition Report and Offer Addendum S for the Property, both of which are attached to the Agreement and incorporated by reference. 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.
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, 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 waived or satisfied as generally described in Paragraph 8.
8. 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 Agreement shall terminate immediately.
 - a. Inspections and Testing. 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 of the Agreement. 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 Closing 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 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.

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, engineers, consultants, and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing as provided in Paragraph 8 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.
10. 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.
11. Title Insurance. Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing a title commitment from Wisconsin Title & Escrow, LLC ("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. 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.
12. 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 date of Closing; or (c) such other date agreed to in writing by the Parties, at the office of the Title Company issuing the commitment for title insurance, unless the Parties agree in writing to an alternate Closing location. 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 of the Agreement.
 - b. If the Parties agree to a later Closing Date, the Closing shall occur on or before fifteen (15) days from (a) the date of the Seller's receipt of notice from the Buyer requesting an earlier Closing Date; or (b) 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 2020 real estate taxes for the Property, as the Buyer will be responsible for the payment of the 2020 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. The Seller shall pay a 3% listing broker commission due in connection with the sale of the Property.
 - i. Title Company shall prepare and deliver at Closing the receipt for the Real Estate Transfer Return required by the Wisconsin Department of Revenue.
 - j. 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. 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.
14. 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.

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.