Legislation Text

File #: 80083, **Version:** 1

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 total cost is $724,000 for acquisition ($704,000) and additional real estate costs for environmental site assessment, title work, miscellaneous closing costs, and staff time ($20,000). Funding for the purchase is authorized within the Parks Division's 2023 Adopted Capital Budget Land Acquisition Program #17128 (Munis project 14210).

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Samuel and Margaret Thomas for the City's acquisition of the property located at 16 Lakeshore Court for assemblage with Olin Park. (District 13)

Body

WHEREAS, Samuel and Margaret Thomas ("Seller") are the owners of the property containing 1,971 square feet of land and single family home improvements, located at 16 Lakeshore Court legally described in the attached Exhibit A ("Property"); and

WHEREAS, the City of Madison ("City") desires to purchase the Property for assemblage with Olin Park, as the acquisition of properties in the vicinity of Olin Park is a long term goal of the City's Parks Division; and

WHEREAS, the City's adopted 2018 Comprehensive Plan identifies the Property as parkland on the Generalized Future Land Use Map with the following note: "The existing office and residential uses are recommended to continue until a future opportunity arises to convert this area to public park and open space use …;" and

WHEREAS, the City's acquisition of the Property would add approximately 54 linear feet of shoreline for public access to Wingra Creek, while providing expanded opportunities for recreational uses in this heavily used park, which is consistent with the City's adopted 2018 Park and Open Space Plan includes the recommendation to "Improve Public Access to Lakes"; 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 $704,000, which was negotiated based on the recommendation of the City's Office of Real Estate Services; and

WHEREAS, the City and the Seller ("Parties") agree that the Agreement for the acquisition of the Property shall include an addendum defining initial terms, in the event the Seller desires to lease the Property after conveyance to the City, to allow time for the Seller to purchase and move to a replacement property.

NOW, THEREFORE, BE IT RESOLVED that the City's Common Council hereby authorizes the City's execution, as Purchaser, of the Agreement with the Seller for the purchase of the Property, substantially on the following terms and conditions:

1. The Property. The Purchaser shall purchase and the Seller shall sell and convey by Warranty Deed ("Deed") fee simple title to the real property located at 16 Lakeshore Court, Madison, WI ("Property"), as legally described in Exhibit A attached hereto, including all improvements and fixtures located thereon and all appurtenances thereto.

2. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Seller or the Purchaser, as indicated on the signature page.

3. Purchase Price. The total purchase price of the Seller's interest in the Property ("Purchase Price") shall be Seven Hundred Four Thousand Dollars and 00/100 ($704,000.00). The Purchase Price shall be payable in cash at Closing, as defined herein, subject to the adjustments and prorations herein provided.

4. Personal Property. The transaction contemplated by the Agreement does not include any personal property.

5. Delivery of Documents. The Seller has provided the Purchaser with a Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards for the Property. Within ten (10) days of the Effective Date, the Seller will reproduce at the Seller's expense and send, either electronically or by hard copy, to the Purchaser at the Purchaser's office, copies of the following documents (if applicable) in the Seller's possession or control: all plans/drawings, reports, service contracts, leases, environmental studies, title insurance policies, etc. Purchaser waives the right to a Real Estate Condition Report and the right to terminate the Agreement for lack of delivery of a Real Estate Condition Report.

6. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided in the Agreement, the Purchaser 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, its agents or employees, in entering into the Agreement or in closing the transaction described herein. Except as provided in Paragraph 9 below, the Purchaser's closing on the acquisition of the Property shall constitute conclusive evidence that the Purchaser is satisfied with the condition of and title to the Property.

7. Due Diligence Period. The Purchaser shall have seven (7) days from the Effective Date ("Due Diligence Period") to review, test and inspect all aspects of the Property, at its sole cost and expense.

   Should the Purchaser desire to close prior to the end of the Due Diligence Period, the Purchaser may provide the Seller with written notice of its intent to do so. The provision of such notice by the Purchaser shall not affect the terms contemplated in the Agreement.

   The Due Diligence Period may be extended upon written agreement of the Parties.

8. Access to the Property. The Purchaser and the Purchaser's authorized agents, contractors, consultants and engineers shall be permitted access to the Property for the purpose of conducting inspections and testing, including but not limited to, a Phase 1 environmental site assessment of the Property at reasonable times with advance notice to the Seller. Further, Purchaser shall not be entitled to undertake a Phase 2 environmental site assessment or undertake any invasive testing for environmental purposes at the Property unless: (i) the Phase 1 environmental site assessment for the Property discloses a recognized environmental condition for which a Phase 2 environmental site assessment is reasonably recommended by the environmental consultant, and (ii) the Seller provides its written consent for the Purchaser to perform such Phase 2 environmental site assessment, which consent may not be unreasonably withheld. The Purchaser shall repair, at the Purchaser'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.

9. Title Insurance. The Seller shall provide to the Purchaser, at the Seller's expense, within five (5) business days prior to Closing, a commitment from First American 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. 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 Purchaser, 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 Purchaser. The Purchaser 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 Purchaser is unwilling to waive, the Agreement shall be void.

10. Survey. Any survey of the Property including, but not limited to, an ALTA/NSPA Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/NSPS 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 Purchaser and the Title Company providing the title insurance described in Paragraph 9 shall be at the sole cost and expense of the Purchaser.

11. Closing.

    a. Closing shall occur on or before five (5) days from (a) the expiration of the Due Diligence Period; or (b) 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.

    b. The Seller agrees to execute and deliver to the Purchaser at closing the Deed conveying the Property to the Purchaser 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; recorded building and use restrictions and covenants; and general taxes levied in the year of Closing.

    c. The Purchaser 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. Real estate taxes applicable to the Property in the year of Closing shall be prorated between the Purchaser and the Seller as of the date of Closing based upon the latest known assessment and latest known mill rate.

    e. The Seller shall be responsible for the payment of any existing special or area assessments, sewer interceptor charges, or any other charges payable to any municipality or utility with regard to the Property as of the date of Closing.

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

    g. The Title Company shall prepare and deliver at Closing the receipt for the Wisconsin Real

Estate Transfer Return due in connection with conveyance of the Property.

h. All costs charged by the Title Company to facilitate Closing shall be prorated between the Parties.

12. Termination by Seller. If prior to Closing the Seller determines, in its sole discretion, that it does not desire to sell the Property, the Seller may provide notice to the Purchaser of such desire and the Agreement shall terminate immediately.

13. Lease. The Parties may negotiate the terms of Addendum A - Lease to Seller ("Addendum A") prior to Closing in the event Seller wants to occupy the Property after Closing for a term not to exceed six (6) months. Pursuant to Paragraph 2 of Addendum A, the Seller shall also execute a Lease at Closing, setting forth standard leasing terms and conditions for the City of Madison subject to mutual negotiation between the Parties. Upon execution by the Seller, Addendum A shall be attached hereto and made part of the Agreement.

14. Entire Agreement. The Agreement contains the entire agreement between the Parties and any modification, alteration or addendum to the Agreement shall be valid only when written and executed by both Parties.

15. Miscellaneous.

a. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of the 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. The 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 and shall not be merged therein.

16. Captions. The captions of the paragraphs in the Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of the provisions hereof.

17. 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.

18. Counterparts and Transmittal of Signatures. The Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same Agreement. A signed copy of the Agreement transmitted by facsimile electronic scanned copy (.pdf) or similar technology and shall be as valid as original. 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.

19. 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, the Superintendent of the City of Madison Parks Division is authorized to execute any other documents as may be necessary to carry out the purposes of this resolution in a form approved by the City Attorney.