MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into as of the 6th day of March, 2007 by and between the City of Madison, Wisconsin, a Wisconsin municipal corporation with its headquarters located at 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin 53703 ("City") and Cherokee Park, Inc., a Wisconsin corporation with its headquarters located at 13 Cherokee Circle, Madison, Wisconsin 53704 ("Cherokee").

WITNESSETH

WHEREAS, the City and Cherokee have been in discussions for approximately two years concerning the future development of portions of lands owned by Cherokee, particularly lands located in the Town of Westport known as the "Fifth Addition" and lands owned in the Town of Burke known as the "High Hill" area and the "Marsh" area; and,

WHEREAS, the City has proposed acquiring from Cherokee certain conservation easement rights and fee simple ownership interest in lands within the Fifth Addition, the High Hill and the Marsh; and,

WHEREAS, parties wish to memorialize their understandings to date concerning these acquisitions by the City.
NOW, THEREFORE, the parties set forth the following understandings subject to the preparation of a definitive agreement between them.

1. **Fifth Addition.** The City will purchase from Cherokee approximately twenty (20) acres of developable land and approximately four (4) acres of wetland, as shown on the attached Exhibit A. In consideration for this purchase, the City will pay not less than $85,000 per acre or more than $100,000 per acre, depending on the appraised value of the lands, for the developable land and $5,000 per acre for the wetland. Any such appraisal will include instructions to the appraiser that the lands are: (a) within the central urban service area and within the Madison Metropolitan Sewerage District; (b) scheduled for residential development in the City of Madison's Comprehensive Plan; and, (c) subject to an Annexation/Attachment Agreement to allow annexation/attachment and development of these lands within the City of Madison.

   In the portion of the Fifth Addition retained by Cherokee, City staff will support residential development at a net density of five (5) to seven (7) dwelling units/acre proposed by Cherokee, substantially as shown on Exhibit A. Final platting of these lands shall be subject to the City of Madison Subdivision and Platting Ordinance and the requirements and be consistent with the adopted Cherokee Special Area Plan.

2. **High Hill Area.** The City will purchase from Cherokee a conservation easement and/or development rights over approximately nineteen (19) acres of land, as shown in the attached Exhibit B. The conservation easement shall provide that no additional structures may be constructed on these lands and that the City shall not include said lands within its parks and trail system. The City shall pay to Cherokee not less than $40,000 per acre or more than $70,000 per acre, depending on the appraised value for the conservation easement on the High Hill lands.
not within the Runway Protection Area. For the High Hill lands within the Runway Protection Area, if the City purchase a conservation easement, the City will pay the appraised value, having taken into account all existing restrictions on the lands. The conservation easement shall be in a form and substance to be negotiated by the parties and which will be in conformity with applicable Internal Revenue Service rules and regulations. On the lands in the High Hill that are not subject to a conservation easement, or in use as the Tiziani or Stricker homestead, City staff shall fully support residential development at a net density of five (5) to seven (7) dwelling units/acre, substantially as shown in Exhibit B. Final platting shall be subject to the City’s platting and subdivision ordinances and be consistent with the adopted Cherokee Special Area Plan.

3. Marsh Area. The City shall acquire in fee simple approximately 234 acres of marsh land as shown on the attached Exhibit C. The City shall pay $5,000 per acre for the acquisition of the marsh lands. The City shall manage the Marsh Area in conformity with the management of the Cherokee Marsh State Natural Area and the Management Plan as shown in Exhibit D, and updated periodically by the City of Madison Board of Park Commissioners and the Wisconsin Department of Natural Resources. The City further covenants and agrees that it will not annex/attach these lands to the City until the expiration of thirty (30) years from the date of the definitive agreement, unless a Cooperative Plan, authorized by Wis. Stats. Sec. 66.0307 provides for an earlier annexation date.

4. Diligent Efforts. The City and Cherokee will negotiate in good faith and use diligent efforts to arrive at mutually acceptable definitive agreements for approval and execution and to proceed with the transactions outlined in this memorandum as promptly as is reasonably practicable.
5. **Expenses.** The parties will each be solely be responsible for and bear all of their respective expenses including, without limitation, expenses of legal counsel, accountants and other advisors incurred at any time in connection with pursuing or consummating the transactions set forth in this MOU.

6. **Like-kind Exchange.** Cherokee intends to use the proceeds from these transactions to engage in a “like-kind” exchange under Section 1031 of the Internal Revenue Code. City agrees to cooperate with Cherokee in effecting the exchange on the condition that there is no liability to the City. **Intent.** This MOU is a non-binding statement of intentions. Final consummation of the transactions are subject to negotiation and execution of definitive agreements approved by the governing boards of both the City and Cherokee. However, the parties shall be bound by a covenant of good faith and fair dealing in moving ahead with this project.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the date first written above.

CHEROKEE PARK, INC.

By: [Signature]
Dennis Tiziani, President

2.28.07
CITY OF MADISON  
a Wisconsin Municipal Corporation

By:  [Signature]  
David J. Cicalewicz, Mayor

By:  [Signature]  
Maribeth Witzel-Behl, Clerk

APPROVED:  
[Signature]  
Dean Brasser, City Comptroller

APPROVED AS TO FORM:  
[Signature]  
Michael P. May, City Attorney
November 13, 2006

Cherokee Special Area Plan

MARSH LAND ACQUISITION

EXHIBIT C

MEMORANDUM OF UNDERSTANDING

MILLER RANCH, 5000 ACRES

LEGEND

- Topographic Contours
- Wetland
- Cherokee Park, Inc.
- Marsh Land Acquisition

EXHIBIT D

CHEROKEE MARSH
MANAGEMENT PLAN FOR EASTERN WETLAND
(Currently owned by CPI)

Background

This peat wetland is part of a large wetland complex in Cherokee Marsh that covers 4,000 acres. It is adjacent to a DNR State Natural Area (SNA) to the north and east that contains high quality wet prairie, sedge meadow, and fen plant communities. This large peat marsh is ecologically unique because it was historically fed only by rainwater and underground seepages, but very little from runoff or flooding. The SNA is managed under the guidelines of the Cherokee Marsh SNA Management Plan, adopted in 1991. The City's intent is to purchase the CPI Eastern Wetland, and manage it as a Conservation Park in conformity with the State Natural Area. The following recommendations apply specifically to the Eastern Wetland, and should be incorporated into future updates of the SNA Management Plan.

Monitoring, Research, Education, and Public Use

Monitoring of plant and animal communities is recommended. Research is encouraged. Educational use should be limited to specialized ecological, restoration and management study that does not require trails or other facilities. Permits would be required for any monitoring, research or educational use.

General public use is not encouraged. Current regulations of Madison Conservation Parks restrict access to designated trails (none are proposed in the wetland). Public trails may be placed on upland adjacent to the marsh on the west and south. Public hunting is not allowed in Conservation Parks. A deer control program is conducted in Cherokee Marsh Conservation Park, but would not be conducted in the treeless open meadow of the Eastern Wetland.

Management Unit Descriptions

Unit A:
This 40-acre unit contains high quality sedge meadow and wet prairie plant communities. It lies between City of Madison conservation parkland located to the north and south.

Unit B:
This 40-acre unit is located immediately north of the Maple Bluff 40 acre parcel. It is good quality sedge meadow, probably degraded by drainage ditches that nearly surround the unit.

Unit C:
This 44-acre unit contains numerous drainage ditches and was row cropped for agricultural crops in the past. Currently it is highly degraded with Reed Canary Grass as the dominant exotic species. Located at the base of the "High Hill" it may be a site of ground water discharge that has been intercepted by the ditches.
Unit D:
This 97-acre unit lies east of North Sherman Avenue. Fair quality sedge meadow with a rare grass (Calamagrostis inexpensa) was noted in 1974 publication Wetlands of Dane County, Bedford, et al. A drought in 1976 allowed part of this unit to be plowed and cropped. Another portion was disturbed when shrub cover was bulldozed into piles. Later it was occasionally mowed for marsh hay. Lack of mowing in recent years and an influx of nutrient rich storm water from the southwest has degraded the southern portion of the unit. Reed canary grass and cattails dominate in that area.

Unit E:
The Village of Maple Bluff owns this 40-acre parcel. The southeast 23 acres was formerly used as a dumpsite. The northwest 17 acres is a wetland of undetermined quality. It is bounded on the north and west by a drainage ditch that drains to the north.

General Land Management Recommendations

This property should be managed in a manner consistent with the goals of the adjacent Cherokee Marsh State Natural Area. The City of Madison should work with the Wisconsin DNR to update the management plan for the Cherokee Marsh SNA. Four primary land management goals are recommended: Control trees and shrubs, control exotic species, close ditches to restore water levels, manage stormwater to reduce the impact of warm, fertile runoff in high quality wetlands.

The study Wetlands of Dane County describes the Eastern Wetland as “a cork in the horizontal bottle, keeping the whole marsh wet by retarding westward flow of water toward the Yahara.” It recommends that the ditches be closed to restore the natural hydrology, and further states the need for a comprehensive groundwater study. If groundwater withdrawal for human use dries out the peat allowing it to oxidize or burn it will release nutrients to Lake Mendota. Adequate groundwater levels are also essential to maintaining the large fen (a plant community dependent on groundwater upwelling through the peat) complexes that exist. There is evidence that groundwater levels have been altered since this 1974. What was described as a large spring located west of the dead end of Hoepker Road no longer produces spring flow.

Units A and B should be considered for inclusion as part of the Cherokee Marsh SNA. Woody tree removal, exotic species control, and drainage ditch closures are some of the management needs to restore this natural area. Elimination of current, and future nutrient rich urban storm water inputs into these wetlands is essential for vegetation restoration to be successful. Ditch closures cannot take place until this important issue is addressed. Fire as a management tool should be reintroduced on a periodic basis when staff and or monies allow.

Specific Land Management Unit Recommendations

Unit A:
The highest priority is to fill the drainage ditch on west boundary to restore natural hydrology. The former drainage ditch on the north boundary was filled in 2004-5 as part of a joint wetland mitigation project (City of Madison, DNR, Dane County Regional Airport, FAA, and DOT). A total of 2 miles of ditches were filled as part of that project. Remove woody plant growth along ditch. Scout interior of unit and remove exotic shrubs.
Unit B:
First priority is to fill drainage ditches surrounding this unit to restore natural hydrology. Second priority is to remove all tree cover along the ditches. Third priority is to control any exotic shrubs in the unit. The south boundary of this unit is adjacent to Unit E (Village of Maple Bluff) so they will need to be consulted before that ditch is closed.

Unit C:
This unit will require extensive work to restore natural area values due to dramatically altered hydrology, exotic species prevalence, and woody tree growth. It would be ideal to do all the restoration work in one phase, but due to cost may have to be done in phases. Priority #1 would involve removing all woody growth along the ditches, and in the abandoned wetland agricultural fields. Priority #2 would involve scraping off the reed canary sod and using it to fill some of the drainage ditches. This would hopefully remove the reed canary seed bank, and then native wetland plants could be seeded. Any remaining ditch bank spoils would be pushed in to cap the ditch fill. Prairie restoration on the adjacent private upland (in the proposed conservation easement area) would also be desirable.

Some trees along the extreme north edge of the unit may remain to provide screening from the current and planned development to the north on the "High Hill". Higher value native trees and shrubs could be added in the future.

Unit D:
The top priority goal for this area is to reduce the current and future impacts of stormwater runoff. Detention, Infiltration, and diversion should all be considered as ways to protect this unique wetland. Feasibility, cost and permitting issues will have to be evaluated for these alternatives. Priority #1 would be to manage the storm water that currently enters the area from the far southwest corner. The warm, nutrient-rich water has degraded the southern boundary of this unit, where it has become dominated by exotics (hybrid cattail and reed canary grass). Currently this water runs east, turns north, and finally heads west to go under North Sherman Avenue to enter the golf course at the west boundary of Unit D. Consideration should be given to piping this flow to the west side of North Sherman near the Cherokee Country Club buildings and then north to enter the golf course drainage system. For the proposed development south of the marsh, diverting the majority of runoff southeast to Starkweather Creek should be considered. This small amount of treated stormwater would have minimal impact on the riverine system of Starkweather, but could have major negative impacts on the infertile peat wetlands in Cherokee.

Priority #2 would involve closing the drainage ditch along the east boundary with Unit E (Village of Maple Bluff). They will need to be consulted prior to closing this ditch.

Priority #3 should include mowing the dense shrub growth with a brush mower to reduce shading of native sedges and grasses. It would also be desirable to find a landscape contractor or farmer interested in using this property to harvest marsh hay. This process harvests and removes nutrients from the site, which will help move the plant community toward the natural low nutrient conditions that existed prior to human disturbances that added nutrients. High nutrient conditions and warm water favors exotics like hybrid cattail and reed canary grass. When this unit was used as a mowing meadow in the past there was an observable improvement in the growth of native plants vs. exotics.
Unit E:
This unit is included because it is contiguous with the Eastern Wetland currently owned by CPI, and contains some ditches that are recommended for closure. It would be desirable to work out a management agreement with the Village of Maple Bluff to facilitate management of the larger wetland.

Prepared by Russ Hefty and Simon Widstrand, Madison Parks Division 11-7-06
Title: SUBSTITUTE - Authorizing the Mayor and Clerk to sign a Memorandum of Understanding with Cherokee Park, Inc. ("Cherokee") providing for the purchase of lands owned by Cherokee and the purchase of conservation easements over other lands owned by Cherokee.

Notes:

Code Sections:

indexes:

Sponsors: Paul J. Van Rooy, Brian Benford, Judy K. Olson, Paul E. Skidmore, Kenneth Golden and David J. Cieslewicz


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**Text of Legislative File 04956**

**Fiscal Note**
The proposed Memorandum of Understanding (MOU) is one of three authorizing proposals that comprise the City's planned development of the Cherokee area. In addition to the MOU, the City has developed a Cherokee Special Area Plan and an Annexation Agreement between Cherokee Park Development, Inc. ("Cherokee"), and the City, each of which is offered under separate authorizing Resolutions requiring Council approval.
The MOU is a statement of intent that provides for the City acquisition of open space protection through the purchase of up to 39 upland acres and 239 wetland acres. The acquisitions are expected to occur in phases over the next five years and will include a mix of fee simple acquisition and purchase of open space easements. Estimated total costs range from $3.37 million - $4.52 million, depending on appraised valuations. Grants will be sought to support up to 75% of the acquisition cost (requesting 50% from DNR Stewardship Fund and 25% from Dane County Conservation Fund). Alternatively, other purchasing mechanisms may be used to spread the acquisition costs to different supporters (direct DNR acquisitions, nonprofit partnerships, etc.). Each acquisition will require a separate resolution and fiscal note. Current balance in the City's fee in lieu of dedication fund (s132) is approximately $1.8 million.

**Title**
SUBSTITUTE - Authorizing the Mayor and Clerk to sign a Memorandum of Understanding with Cherokee Park, Inc. ("Cherokee") providing for the purchase of lands owned by Cherokee and the purchase of conservation easements over other lands owned by Cherokee.

**WHEREAS**
The City wishes to purchase, in fee simple, certain lands owned by Cherokee and wishes to purchase conservation easements over additional lands owned by Cherokee; and

WHEREAS, in recognition of the unique environmental characteristics of the Cherokee lands, the City has been working, and plans to continue working with Dane County, the State of Wisconsin, and the Department of Natural Resources to acquire sufficient funds to assist in the acquisition of the above land interests; and

WHEREAS, the City and Cherokee wish to recognize the existing stage of their agreement.

**NOW, THEREFORE, BE IT RESOLVED**, the City and Cherokee shall enter into this Memorandum of Understanding regarding the acquisition by the City of Cherokee land interests with the following provisions;

1. In the Fifth Addition, as shown on Exhibit A, the City will purchase, in fee simple, approximately twenty (20)
acres of developable land for not less than $85,000 per acre or more than $100,000 per acre and approximately four (4) acres of wetland for $5,000 per acre, depending on the appraised value.

2. Appraisals for the above lands shall include instructions that the lands are within the Central Urban Service Area, and the Madison Metropolitan Sewerage District; are noted as suitable for residential development in the City's Comprehensive Plan; and are subject to an Annexation / Attachment Agreement with the City.

3. On the remaining lands in the Fifth Addition owned by Cherokee, the City shall support residential development at a net density of five (5) to seven (7) dwelling units per acre. Final development of these lands shall be subject to the City of Madison Subdivision Ordinances, Zoning Ordinances, and be consistent with the adopted Cherokee Special Area Plan.

4. The City will purchase from Cherokee a conservation easement on approximately fourteen (14) to twenty-one (21) acres on the High Hill, as shown on Exhibit B. The conservation easement shall provide that no additional structures shall be placed on these lands and that the City shall not include the lands within its park and trail system. For the approximately-twelve (12)- fourteen (14) acres of High Hill lands not in the Runway Protection Area, as shown in Exhibit B, the City shall pay to Cherokee not less than $40,000 per acre or more than $70,000 per acre, depending on the appraised value. If the City purchases the approximately seven (7) acres of High Hill lands in the Runway Protection Area, it shall pay the appraised value, having taken into account all existing restrictions.

5. On the lands in the High Hill that are not subject to a conservation easement or other restriction, or used as the Tiziani and Stricker homesteads, the City shall support residential development at net densities of five (5) to seven (7) dwelling units per acre. Final development of these lands shall be subject to the City of Madison Subdivision Ordinances, Zoning Ordinances, and be consistent with the adopted Cherokee Special Area Plan.

6. The City shall acquire, in fee simple, approximately two hundred thirty-four (234) acres of marsh land (Marsh Area), as shown on Exhibit C. The City shall pay $5,000 per acre for the marsh lands and shall manage the Marsh Area in conformity with the Cherokee Marsh State Natural Area and with a City management plan for the area, as shown on Exhibit D.

7. The City agrees that it will not annex / attach the Marsh Area or the parts of the High Hill subject to a conservation easement or used as the Tiziani and Stricker homesteads until thirty (30) years from the date of the execution of this Memorandum of Understanding.

8. Cherokee intends to use the proceeds from these transactions to engage in a like-kind exchange under Section 1031 of the Internal Revenue Code and the City agrees to cooperate with Cherokee in effecting the exchange on the condition that there is no liability to the City.

9. This MOU is a non-binding statement of intentions. Final consummation of the transactions is subject to negotiation and execution of definitive agreements approved by the governing boards of both the City and Cherokee. The parties, however, shall be bound by a covenant of good faith and fair dealing in moving ahead with this project.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute the Memorandum of Understanding.

BE IT FURTHER RESOLVED that the City of Madison Parks Division is authorized to apply for and administer funding for the purchase of lands in Cherokee Marsh from the Wisconsin Stewardship Grant Fund, the Dane County Conservation Fund, and other sources.