

# **YANKTON BOARD OF CITY COMMISSIONERS**

City Commission CIP Workshop beginning at 5:30 P.M.

**Monday, April 20, 2015**

City of Yankton City Hall – Meeting Room B

Located at 416 Walnut Street

## **I. ROUTINE BUSINESS**

### **1. Roll Call**

## **II. NEW BUSINESS**

### **1. 15<sup>th</sup> Street Acquisition**

Consideration of Memorandum #15-85 regarding 15<sup>th</sup> Street H-Plat Acquisition

**Attachment IV-1**

## **III. Opening Remarks CIP – City Manager Amy Nelson**

## **IV. Review of CIP Updates**

- 1. City Manager, Finance, Information Services & Community Development (Page 1)**
- 2. Police & Animal Control (Page 2)**
- 3. Fire & Civil Defense (Page 3)**
- 4. Engineering, Streets & Snow and Ice (Page 4)**
- 5. City Hall & Traffic Control (Page 5)**
- 6. Airport (Page 6)**
- 7. Senior Citizens Center & Library (Page 7)**
- 8. Parks & Recreation (Page 8)**
- 9. Memorial Pool, Marne Creek & Bridge and Street (Page 9)**
- 10. Water (Page 10 & 11)**
- 11. Wastewater (Page 12)**
- 12. Cemetery, Solid Waste Collection & Solid Waste Disposal and Recycling (Joint Powers) (Page 13)**
- 13. Fox Run Golf Course (Page 14)**
- 14. Summit Activities Center (Page 15)**
- 15. Special Capital Improvement Tax (Page 16 & 17)**
- 16. Special Assessment Projects & Central Garage (Page 17)**

## **V. Open Discussion**

## **VI. Adjourn**

## *Memorandum #15-85*

**To:** Amy Nelson and City Commission  
**From:** Ross DenHerder, City Attorney  
**Subject:** 15<sup>th</sup> Street H-Plat Acquisition  
**Date:** April 16, 2015

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Attached is the proposed agreement under which the City purchases the final remaining portion of right of way on proposed 15<sup>th</sup> Street from West City Limits Road to Dakota Street. The City needs this section of property to complete the right of way to make construction of 15<sup>th</sup> street possible regardless of when the project gets constructed. The project is critical to opening up a substantial amount of land within the City for residential development.

The total purchase price is \$70,0000.00. In addition to acquiring the right of way, we have negotiated a number of essential terms that would otherwise be unavailable if the right of way were acquired through eminent domain. Such material terms of the agreement include the following:

**House relocation:** Presently the Seller's house is located extremely close to the right of way. Under the agreement, the Sellers are required to physically relocate the house by no later than July 31, 2015. In addition, the new driveway requires "head-out" access onto 15<sup>th</sup> street.

**Utility hookup timing:** Presently the Seller's house utilizes a well, a septic system and a propane tank. The agreement secures a commitment from the Seller to connect the relocated house to City water and sewer and natural gas service within 60 days of the date such service are available adjacent to the Seller's lot. Until such time, the City will cover the cost of temporary reconnection to the existing septic system and well (each capped at \$2,500.00).

**Waiver of Right to Protest:** The agreement also includes a waiver of the Seller's right to protest any special assessments for the construction of 15<sup>th</sup> Street.

Per City policy, action to acquire property requires a minimum of six votes to pass.



15<sup>th</sup> Street Project WCLR to Dakota Street —————

33' wide / 254.88' long segment involved in this discussion —————

As previously discussed with the Commission, there are four owners along the corridor and three of them have already petitioned for an assessment district improvement project. 15<sup>th</sup> Street is a collector street so there will be City expense that we would need to budget for over and above what can be assessed.

Respectfully submitted,

Ross DenHerder  
City Attorney

**Recommendation:** It is recommended that the City Commission approve Memorandum #15-85 authorizing the City Manager to execute all necessary documents associated with acquiring the described property.

\_\_\_\_\_ I concur with this recommendation.

\_\_\_\_\_ I do not concur with this recommendation.

\_\_\_\_\_  
Any Nelson, City Manager

\_\_\_\_\_ Roll Call

## REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into as of the \_\_\_\_ day of March, 2014, by and between **Stacy Barnes** (“Seller”), and the **City of Yankton**, a South Dakota municipal corporation ("Buyer"). This Agreement is also ratified and approved by Mark & Lydia, LLC, legal title holder and seller under an existing Contract for Deed dated \_\_\_\_\_, and recorded with the Yankton County Register of Deeds at Book \_\_\_\_, in Page \_\_\_\_ (the “Contract for Deed”).

### WITNESSETH:

WHEREAS, Seller is currently the owner of certain real property located within the City of Yankton, South Dakota and legally described as:

Lot H1 located within the South Two Hundred Twenty-Five Feet (S 225’) of the West Two Hundred Fifty-Five Feet (W 255’) of the East Five Hundred Seventy-Seven (E 577’) of the Northwest Quarter of the Southwest Quarter (NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub>) of Section Twelve (12), Township Ninety-Three (93) North, Range Fifty-Six (56) West of the 5th P.M., City and County of Yankton, South Dakota, as per the Plat of Lot H1 recorded in Book \_\_\_\_, Page \_\_\_\_.

Which real property is hereinafter collectively referred to as the "Property"; and

WHEREAS, Seller desires to sell and to transfer the Property to Buyer, and Buyer desires to purchase the Property from Seller.

NOW, THEREFORE, in consideration of the premises set forth and the mutual covenants and agreements set forth herein, the parties agree as follows:

1. Conveyance. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property, in fee simple, free and clear of all encumbrances except easements, covenants and restrictions of record as of the date hereof, by good and sufficient warranty deed.
2. Personal Property. No personal property is included in the sale contemplated by this Agreement.
3. Purchase Price. In consideration of the conveyance of the Property by Seller, Buyer agrees to pay to Seller the sum of Seventy Thousand Dollars (\$70,000.00), subject to any credits herein, payable as follows:

- a) The Purchaser shall tender an initial payment of Sixty-Five Thousand Dollars (\$65,000.00) at the time of closing and transfer of the Property to the City.
  - b) The balance of the purchase price Five Thousand Dollars (\$5,000.00) shall be tendered from Seller to Buyer within thirty (30) days following the successful relocation of the house and a conditional certificate of occupancy by the City Building Official indicating that the house is habitable and successful connection to municipal water and sanitary sewer in accordance with paragraph 6 and 7 below.
4. Real Estate Taxes. Real estate taxes assessed for the year 2014 (payable in 2015) shall be paid in full by Seller on or before closing. All taxes assessed for 2015 (payable in 2016) up to and including the date of closing shall be paid by Seller to Buyer as a reduction of the purchase price appearing on the HUD-1 Closing statement at the time of closing.
5. Assessments. Any assessments which are legally levied upon the Property, or which will be levied upon the Property, for improvements or betterments which are completed but not entered on the books of the local assessing authority as of the date of closing, if any, shall be paid by Seller.
6. House Relocation. The parties hereto acknowledge and agree that the Seller's house is currently encroaching upon the Property, which house is not included in the sale contemplated by this Agreement. The parties further acknowledge that the house must be physically relocated to permit Seller to construct 15<sup>th</sup> Street upon the Property. Seller agrees Seller shall cause the house to be physically relocated no later than July 31, 2015. If the house is relocated to another location upon the Seller's contiguous property, the house shall be relocated with sufficient set-back to comply with existing ordinances and sufficient to provide "head out" egress onto 15<sup>th</sup> Street right of way as the same shall be constructed upon the Property. This means that the site design shall provide an element enabling automobiles to enter 15<sup>th</sup> Street right of way driving forward as opposed to having to back out onto the street. The Buyer shall waive the fees for all required moving and building permits to comply with the terms of this Agreement.
7. Connection to Essential Public Utilities. At the time the house is relocated, Seller shall be required to connect the house to all essential public utilities (including water, sewer, natural gas and electricity) that are available in a location adjacent to the Seller's remaining real property at

Seller's expense. For each utility service not so available at the time the house has been relocated, Seller shall be permitted to receive a conditional Certificate of Occupancy that will permit Seller to utilize the house without connection to such public utility. However, as soon as each essential public utility has become so available to Seller for connection to the relocated house, Seller shall have Sixty (60) days to connect the house to each such utility at Seller's expense. Failure to timely install such utilities shall result in revocation of the conditional Certificate of Occupancy. At the time the house is relocated, the Buyer shall reimburse the Seller for the actual invoiced cost paid by the Seller to temporarily reconnect the Seller's house to the existing septic system upon the Seller's remaining real property in an amount not to exceed \$2,500.00. At the time the house is relocated, if the Buyer is unable or elects not to provide a temporary water line at the planned permanent location upon the planned 15<sup>th</sup> Street right of way adjacent to the Seller's real property, the Buyer shall also reimburse the Seller for the actual invoiced cost paid by the Seller to temporarily reconnecting the Seller's house to the existing well upon the Seller's remaining real property in an amount not to exceed \$2,500.00.

8. Conditions Precedent. Closing is contingent upon the following events:

- (a) *Closing.* Closing on or before April 30, 2015. If the closing does not occur prior to April 30, 2015, then the parties may extend the closing only if they both agree to do so in writing.
- (b) *Title Insurance.* Prior to closing, Seller shall deliver to Buyer evidence of title in the form of a current commitment for an Owner's Policy of Title Insurance (the "Title Commitment") setting forth the state of title to the Real Property, the cost of which will be divided equally between Buyer and Seller. Buyer shall give Seller written notice of Buyer's receipt of the Title Commitment of any objections to the condition of the title as reflected by the Title Commitment. If Seller fails to resolve all objections within 14 days following Seller's receipt of the objection, Buyer shall have the option to terminate this agreement.

9. Warranties of Seller. Seller covenants, warrants and represents as follows:

- a. At the time of closing, Seller shall be the owner of all right, title and interest in and to the Property and shall have the legal right and ability to

transfer and convey all such right, title and interest in and to the Property;

- b. Seller shall, at closing, convey the Property to Buyer in fee simple, by good and sufficient Trustee's Deed containing all warranties of title customarily contained within a Warranty Deed, free and clear of all encumbrances except easements, covenants, and restrictions of record;
  - c. Seller shall furnish to Buyer, at closing, a commitment of title insurance evidencing good and merchantable title of record, free and clear of all encumbrances except as stated in subsection (b) above; and
10. Condition. Buyer shall have the opportunity to fully inspect the Property as it desires and agrees to purchase the same in its "as is" condition, with no warranties, express or implied, and Seller, other than the warranty noted below, expressly disclaims all warranties including, without limitation, any implied warranty of merchantability or fitness for a particular purpose. However, Seller further warrants that Seller has not hidden or otherwise rendered undiscoverable any known damage, defects or other conditions upon the property otherwise reasonably discoverable by reasonable non-intrusive inspections of the Property.
11. Possession. Buyer shall be entitled to possession of the Property immediately upon closing and tender in full of the purchase price.
12. Allocation of Transaction Expenses.
- a. The following expenses will be paid by the Buyer:
    - i. Any recording fees associated with recording any of the deeds or mortgages;
    - ii. All inspections and surveys, if any; and
    - iii. One-Half (1/2) of the real estate closing agent's fees and One-Half (1/2) of the owner's policy of title insurance.
  - b. The following expenses will be paid by the Seller:
    - i. All transfer fees associated with transferring title to the Property, and
    - ii. Any fees associated with recording of any mortgage satisfactions and related documents; and

- iii. One-Half (1/2) of the real estate closing agent's fees and One-Half (1/2) of the owner's policy of title insurance.
13. Waiver of Right To Protest. Seller acknowledges that the Buyer intends to construct the 15<sup>th</sup> Street right of way following closing and specially assess the costs of such construction (excluding the costs of "oversizing" the right of way beyond that of a "local street section") against the neighboring property owners in accordance with SDCL Chap. 9-43. Seller hereby waives all rights to protest the special assessment to be allocated to the Seller's contiguous property in accordance with such chapter. Seller also acknowledges that the construction of 15<sup>th</sup> Street right of way provides a significant special benefit to the Seller's contiguous real property. Seller waives any claim that the cost of such special assessment exceeds the special benefit attributed to Seller's contiguous property by the construction of the 15<sup>th</sup> Street right of way.
  14. Time of the Essence. It is expressly understood and agreed by the parties that time is of the essence in this Agreement.
  15. Benefit. This Agreement shall inure to the benefit of and be binding upon the parties and also upon their respective heirs, representatives, successors and assigns.
  16. Governing Law. This Agreement and all obligations created hereunder or required to be created hereby shall be governed by and construed and enforced in accordance with the laws of the State of South Dakota.
  17. Execution of Additional Documents. The parties hereto agree to execute any and all additional documents necessary to effectuate the terms and conditions of this Agreement.
  18. Property Condition Disclosure. All real property condition disclosures otherwise required by law are hereby waived by the Buyer in favor of Seller's warranties in accordance with paragraph 8 above, and inspections, if any, in accordance with paragraph 9 above, and.
  19. Integration. Both parties agree that this agreement contains the entire understanding between and among the parties, both written and oral, and supersedes any prior understanding and agreements among them, both written and oral, respecting the subject matter of this agreement.



20. Modification. This agreement shall not be modified, amended or supplemented without an authorized, written agreement between the parties.
21. Severability. If any portion of this agreement is found to be unenforceable for any reason, then the remainder shall remain in full force and effect.
22. Counterparts. This agreement may be executed in several counterparts, which taken together shall be deemed an original, and said counterparts constitute but one and the same instrument. Photocopies and facsimile reproductions of the executed original and/or counterparts thereof shall be treated the same as an original.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement on the date and year first above written.

**SELLER**

**BUYER**

**City of Yankton**

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**Stacy Barnes**

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By: Amy Nelson  
Its: City Manager

**CONSENT AND RATIFICATION**

On behalf of Mark & Lydia, LLC, legal title holder to the Property described above and seller under the recorded Contract for Deed, We, Mark D. Giziewski and Lydia Giziewski, the sole Members of said limited liability company, hereby consent to and ratify the above Real Estate Purchase Agreement and all terms set forth therein. On behalf of said LLC, we agree to sign a Quit Claim Deed to the Property to be tendered to the City of Yankton at the time of Closing.

**Mark & Lydia, LLC**

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By: Mark D. Giziewski  
Its: Member Manager

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By: Lydia Giziewski  
Its: Member Manager