



# City of Grand Island

Tuesday, July 13, 2004

Council Session

## Item I2

**#2004-171 - Approving Authorization for the City to Purchase  
Property from Rudy Plate Located East of Sycamore Street and  
North of First Street**

Staff Contact: Doug Walker

# **Council Agenda Memo**

**From:** Douglas R. Walker, City Attorney

**Meeting:** July 13, 2004

**Subject:** Purchase of Real Estate from Rudolf Plate located East of Sycamore Street and North of First Street, which is the South Half of Block 77 Original Town of Grand Island, Hall County, Nebraska

**Item #'s:** I-2

**Presenter(s):** Douglas R. Walker, City Attorney

## **Background**

At the May 25, 2004, meeting of the Grand Island City Council, a public hearing was conducted on the purchase of the real estate owned by Rudolf Plate in the South Half of Block 77, Original Town of Grand Island, Nebraska. Since the public hearing occurred, the city has received an appraisal of Mr. Plate's real estate which valued the property at \$363,000 and negotiated a purchase agreement for the acquisition of this property for the amount of \$370,000. Before the city can proceed with the purchase of the property, the Council will need to pass a resolution authorizing the Mayor to sign the purchase agreement on behalf of the city.

## **Discussion**

The city is interested in purchasing this real estate for use either as additional parking for City Hall or possibly as a future municipal building due to its proximity across the street east from City Hall. The purchase of this property will also improve a block of real estate in downtown Grand Island near City Hall which has been designated as having blighted and substandard conditions. For the above mentioned reasons, city administration is seeking City Council approval of the resolution authorizing the city to execute a purchase agreement for the acquisition of this real estate.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the resolution authorizing the city to execute a purchase agreement for the acquisition of this real estate.
2. Disapprove or /Deny the resolution which would prevent the city from entering into a purchase agreement for the purchase of the real estate.
3. Modify the resolution to meet the wishes of the Council
4. Table the issue

### **Recommendation**

City Administration recommends that the Council approve the resolution authorizing the city to execute a purchase agreement for the acquisition of this real estate.

### **Sample Motion**

Approve the resolution authorizing the acquisition of the real estate in the South Half of Block 77, Original Town of Grand Island, Nebraska.

## **AGREEMENT FOR WARRANTY DEED**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of July, 2004, by and between the CITY OF GRAND ISLAND, NEBRASKA, A Municipal Corporation, hereinafter referred to as "City", and PLATE ENTERPRISES, L.L.C., hereinafter referred to as "Seller".

1.     **STATEMENT OF PURPOSE.** This Agreement for Warranty Deed (Agreement) is made for the purpose of setting forth the terms and conditions under which the City will buy and the Seller will sell the real estate described below in accordance with the parties' respective terms and conditions set herein.

2.     **REAL ESTATE TO BE CONVEYED.** The tract of real estate to be conveyed by the Seller to the City pursuant to this Agreement is described as follows:

Lots Five (5), Six (6), Seven (7) and Eight (8), Block  
Seventy-Seven (77), Original Town, now City of  
Grand Island, Hall County, Nebraska.

In consideration of the following payments by the City to the Seller, the Seller agrees to sell and convey to the City by warranty deed, free and clear of all liens and encumbrances except covenants, easements and restrictions of record, the above described tracts. Closing shall occur at the earliest convenience of the parties following compliance with the conditions precedent set forth in this Agreement.

3.     **CONSIDERATION TO BE PAID.** The consideration for the real estate described above to be paid by the City to the Seller is as follows:

Fifty Thousand Dollars (\$50,000.00) shall be paid by the  
Buyer to the Seller upon approval and execution of this  
Agreement by all parties. Three Hundred Twenty  
Thousand Dollars (\$320,000.00) shall be paid upon closing.

4.     **TITLE INSURANCE.** As soon as practical after execution of this Agreement by all parties, but prior to closing, the City may at its own cost obtain a current commitment (commitment) for an owner's policy of title insurance for the above described tracts, in favor of the City. After receipt of the commitment, the City shall have a period of thirty (30) days thereafter to examine the commitment to ascertain whether or not there is any defect or condition which renders any of the conditions precedent in this Agreement unsatisfied. In such event, the City shall during the examination period, provide written notice to the Seller specifying the

relevant defect or condition (defect notice) and thereafter the Seller shall have a reasonable period of time, not to exceed ninety (90) days within which to cure such defect or condition and provide written notice of such cure (cure notice) to the City, or at the Seller's option, to provide the City written notice of the Seller's election to cancel this Agreement. If the City provides the Seller a defect notice in the manner and within the time specified herein, and the Seller fails to cure such defect or condition and provide the City with a cure notice, the City, at its sole discretion, may terminate this Agreement or file an action in the Hall County District Court to require specific performance of this Agreement by the Seller.

5. ENTRY PRIOR TO POSSESSION. Prior to the delivery of possession of the above described land, the City and/or its representatives shall have the right to enter upon this real estate after making an appointment with the Seller, for the purpose of making borings, surveys, studies or other tests which may assist the City in determining the suitability of this land for use as a location for development of public parking facilities and/or construction of a governmental building. The City shall indemnify and hold the Seller harmless from any injuries, liabilities or damages caused by the City's entry upon the land and shall restore the land to its original state prior to any such entry in the event closing does not occur. This undertaking of indemnity shall survive the closing and/or termination of this Agreement.

6. SURVEY. Prior to closing on this real estate, the City may at its own cost obtain a physical survey of the above described land. In the event the results of the survey disclose a defect or condition which renders any of the conditions precedent specified herein unsatisfied, the City shall provide written defect notice to the Seller and the Seller shall have a reasonable period of time, not to exceed ninety (90) days within which to cure such defect or condition and provide written cure notice to the City or, at the Seller's option, to provide the City written notice of the Seller's election to cancel this Agreement.

7. CLOSING AND POSSESSION. Closing shall occur on or about January 3, 2005, after approval and execution of this Agreement by all parties and completion of all conditions precedent. Prior to closing, Seller shall give notice to all tenants on this property that their lease will not be renewed and that the tenants will be required to vacate the premises before the date of closing so that the City will have full and complete possession of this real estate upon closing.

8.     **CONDITIONS PRECEDENT.** The City's obligation to purchase this real estate and pay the purchase price for the respective tracts are subject to the following conditions precedent having been fully satisfied or waived, in writing, by the City:

- a.     The Seller shall have, and be able to convey to the City at closing, marketable fee simple title to the real estate by warranty deed, free and clear of all liens, claims and encumbrances.
- b.     There shall be no pending proceedings or actions of any kind whatsoever, or judgments or claims or any nature whatsoever, pending against the Seller with respect to the above described real estate.
- c.     The above referenced survey of the above described real estate shall disclose that to the respective tracts which would interfere with the development or use of any of the tracts by the City as public parking facilities or a location of a governmental building; that there are no material encroachments or projections on the property structures, facilities or improvements on adjoining property other than those of the Buyer located near the northwest corner of Lot 5.
- d.     There shall be no uncured violations of any state, federal, local laws, ordinances or regulations with respect to the above described real estate.
- e.     The borings, studies, inspections or other tests made by the City and/or its representatives pursuant to this Agreement shall not discover the presence of, release from or storage on the above described tracts of pollutants, contaminants other hazardous substances and shall not discover that soil, drainage or subsurface conditions render the property not suitable for use of any one or more of the tracts for public parking facilities or governmental buildings.
- f.     The above described tracts shall be free and clear of all leases, licenses, tenancies, and other occupancies and all adverse claims however they may be derived or claimed.
- g.     The above described tracts shall be in substantially the same physical condition as they are on the date of execution of this Agreement by all parties.
- h.     There shall be no unpaid bills, charges, costs or expenses of any kind which create or permit the filing of a statutory lien of any kind against any of the above described real estate.

The City shall have a period of 30 days from the date of receipt of the commitment for an owner's policy of title insurance during which to determine that the foregoing conditions precedent have been met, to the reasonable satisfaction of the City and to deliver written notice to the Seller specifying, in reasonable detail, all conditions precedent (condition notice) which have not been met. Upon receipt of such condition notice, the Seller, may at their option, elect to cancel this Agreement by written notice to the City in which event this Agreement shall be automatically canceled, or elect to undertake such action as is necessary to satisfy the conditions precedent identified in the condition notice. If the Seller elects to undertake such action as is necessary to satisfy the conditions precedent identified in a condition notice, the Seller shall have a reasonable period of time, not to exceed ninety (90) days, within which to complete such action as is necessary to meet all unsatisfied conditions precedent identified in said condition notice. If the Seller fails to satisfy such conditions precedent, the City may elect to terminate this Agreement or waive such unsatisfied condition precedent. Upon expiration of the 30 day due diligence period set forth above, unless the City has provided a condition notice to the Seller in the manner and within the time specified herein, the City shall be deemed to have waived any right to terminate this Agreement because of the non-satisfaction of any of the foregoing conditions precedent and, subject to the Seller's performance of their obligations under this Agreement, the City shall be obligated to consummate the purchase transactions described above.

9. ENVIRONMENTAL WARRANTIES. The Seller hereby represents and warranties that during its period of ownership, the Seller, its agents and employees, have complied with all federal, state and municipal environmental laws, regulations and ordinances as they relate to the above described tracts, and that the Seller has no actual notice or knowledge of any prior violations of environmental laws effecting the tracts.

10. TAXES. The Seller shall pay all real estate taxes for 2004 and all prior years which are levied on the above described real estate prior to the date of closing.

11. CLOSING EXPENSES. The City shall pay all closing costs in connection with the above described tracts.

12. SECTION 1031 EXCHANGE. The parties understand and acknowledge that the Seller intends to treat the sale of this real estate as a "like-kind" exchange pursuant to Internal Revenue Code Section 1031. Accordingly, the parties agree to cooperate further, and facilitate

the Seller's Section 1031 exchange in a manner which conforms to the rules and regulations of the Internal Revenue Service and Section 1031 of the Internal Revenue Code.

13. SELLER'S RIGHTS TO RENTS AND FIXTURES. The Seller shall receive and retain all rentals accrued prior to the date of possession as set forth above in paragraph 7. Further, the Seller shall have the right to remove any personal property and fixtures located in the structures prior to the date of possession, including, but not limited to, heating and air conditioning equipment and systems, plumbing fixtures and equipment, electrical fixtures and equipment, and other similar items.

14. NOTICES. All notices envisioned under the terms and conditions of this Agreement may be sent to the other party by first class mail, postage prepaid and addressed as follows or delivered in hand to said same addresses:

City of Grand Island  
Attention: Mayor  
100 East First Street  
P.O. Box 1968  
Grand Island, NE 68802-1968

Plate Enterprises, L.L.C.  
c/o Rudolf F. Plate  
2209 East Stolley Park Road  
Grand Island, NE 68801

15. CHOICE OF LAWS. This Agreement shall be construed in accordance with the laws of the State of Nebraska and the United States of America.

16. ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the City and Seller, notwithstanding any written or oral agreements to the contrary. This Agreement may be amended only in writing, duly reviewed, approved and executed by the respective parties.

17. BINDING EFFECT. All covenants and conditions herein contained shall extend to and be obligatory upon the successors, assigns, heirs and legal representatives of the parties hereto.

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA,  
A Municipal Corporation,

\_\_\_\_\_  
RaNae Edwards, City Clerk

By: \_\_\_\_\_  
Jay Vavricek, Mayor

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF HALL )

Before me, a notary public qualified in said county, personally came Jay Vavricek, Mayor of the City of Grand Island, Nebraska, a municipal corporation, known to me to be such officer and the identical person who signed the foregoing document and acknowledged that the foregoing signature was his voluntary act and deed pursuant to Resolution \_\_\_\_\_.

Witness my hand and notarial seal, this \_\_\_\_\_ day of July, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

PLATE ENTERPRISES, L.L.C.,

By:\_\_\_\_\_  
Rudolf F. Plate, Manager

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF HALL )

Before me, a notary public in and for said county and state, personally appeared Rudolf F. Plate, Manager of Plate Enterprises, L.L.C., to me known to be the identical person who executed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal this \_\_\_\_\_ day of July, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

RESOLUTION 2004-171

WHEREAS, on May 25, 2004, the City of Grand Island held a public hearing and approved the purchase of Lots Five (5), Six (6), Seven (7), and Eight (8), Block Seventy Seven (77), Original Town, now City of Grand Island, Hall County, Nebraska, from Rudolf F. Plate and Jeannice R. Plate, husband and wife; and

WHEREAS, such property is located along First Street between Sycamore and Kimball Avenue; and

WHEREAS, the parties have negotiated a purchase price for the property of \$370,000, with \$50,000 to be paid by the City upon the approval and execution of an Agreement for Warranty Deed, and the remaining \$320,000 to be paid by the City at closing; and

WHEREAS, the appraised value of the property is \$363,000; and

WHEREAS, the agreement is contingent upon the City of Grand Island approving and adopting a fiscal year 2004-2005 budget with sufficient and appropriate appropriations to perform the City's duties and responsibilities under the Agreement for Warranty Deed; and

WHEREAS, the City would take possession of the property on or about January 3, 2005; and

WHEREAS, an Agreement for Warranty Deed has been prepared by the City Attorney and Plate Enterprises, L.L.C. setting out the terms and conditions for the conveyance of such property.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that:

1. The acquisition of the above-described property at the purchase price of \$370,000 is hereby approved, with \$50,000 to be paid by the City upon approval and execution of the Agreement for Warranty Deed, and the balance of \$320,000 to be paid by the City at the closing.
2. The Agreement for Warranty Deed between the City and Plate Enterprises, L.L.C., is hereby approved; the City agrees to appropriate sufficient funds to complete the purchase, and the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, July 13, 2004.

Approved as to Form	<input type="checkbox"/> _____
July 8, 2004	<input type="checkbox"/> City Attorney

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RaNae Edwards, City Clerk