



City of Grand Island

Tuesday, July 12, 2005

Council Session

Item G14

**#2005-201 - Approving Agreement for Warranty Deed for
Property Located at 244 and 304 Stuhr Road (Melvin & Jo Ann
Meyer and M.J. Lake, LLC)**

Staff Contact: Doug Walker

Council Agenda Memo

From: Douglas R. Walker, City Attorney

Meeting: July 12, 2005

Subject: Agreement for Warranty Deed for Property Located at 244 and 304 Stuhr Road (Melvin and JoAnn Meyer and MJ Lake, LLC)

Item #'s: G-14

Presenter(s): Douglas R. Walker, City Attorney
Jim Rowell, Fire Chief

Background

At the June 28th meeting the City Council held a public hearing for the acquisitions of the real estate at 244 and 304 Stuhr Road to be used for a fire training facility. The attached resolution will specifically authorize the city to proceed with executing an Agreement for Warranty Deed so that the purchase of this property can be completed later this year.

Discussion

It is necessary for the City Council to approve by resolution the acquisition of real property by the city. The city has completed all other prerequisites for purchasing the property located at 244 and 304 Stuhr Road from Melvin and JoAnn Meyer and MJ Lake, LLC and the city is now ready to proceed with executing the Agreement for Warranty Deed if the Council approves the resolution.

Alternatives

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

1. Move to approve the resolution authorizing the execution of an Agreement for Warranty Deed to purchase the property at 244 and 304 Stuhr Road from Melvin and JoAnn Meyer and MJ Lake, LLC.
2. Do not approve the resolution.

3. Postpone the issue to future date.
4. Take no action on the issue.

Recommendation

City Administration recommends that the Council approve the resolution authorizing the city to enter into an Agreement for Warranty Deed to purchase the property located at 244 and 304 Stuhr Road from Melvin and JoAnn Meyer and MJ Lake, LLC.

Sample Motion

Motion to approve the resolution authorizing the acquisition of the real estate set forth above.

AGREEMENT FOR WARRANTY DEED

THIS AGREEMENT made and entered into on this ____ day of _____, 2005, by and between the CITY OF GRAND ISLAND, NEBRASKA, A Municipal Corporation, hereinafter referred to as "City" and MELVIN W. MEYER and JO ANN MEYER, Husband and Wife, and M.J. LAKE, L.L.C., A Nebraska Limited Liability Company, 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 Sellers 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 two tracts of real estate (tracts) to be conveyed by the Sellers to the City pursuant to this Agreement are described in Exhibit "A", attached hereto and incorporated herein by reference.

In consideration of the following payments by the City to the Sellers, the Sellers agree 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 Sellers will be as follows:

The total purchase price will be Five Hundred Eighty-Three Thousand Nine Hundred Dollars (\$583,900.00). Ten Thousand Dollars (\$10,000.00) will be payable upon the execution of this Agreement and the remaining balance of Five Hundred Seventy-Three Thousand Nine Hundred Dollars (\$573,900.00) will be due upon closing which shall be December 1, 2005.

4. **TITLE INSURANCE.** As soon as practical after execution of this Agreement by all parties, but prior to closing, the City will obtain a current commitment (commitment) for an owner's policy of title insurance for the above described tracts, in favor of the City. The cost of title insurance shall be divided equally between the Buyer and Seller. After receipt of the commitment, the City shall, prior to closing, 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 Sellers specifying the relevant defect or condition (defect notice) and thereafter the Sellers 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 Sellers' option, to provide the City written notice of the Sellers' election to cancel this Agreement. If the City provides the Sellers a defect notice in the manner and within the time specified herein, and the Sellers fail 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 Sellers.

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 Sellers, for the purpose of making environmental reports, 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 a fire training center. The City shall indemnify and hold the Sellers 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 tracts. In the event the results of the survey discloses a defect or condition which renders any of the conditions precedent specified herein unsatisfied, the City shall provide written defect notice to the Sellers and the Sellers 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 Sellers' option, to provide the City written notice of the Sellers' election to cancel this Agreement.

7. CLOSING AND POSSESSION. Closing shall occur on or about December 1, 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 Sellers 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 except those which are disclosed on the owner's policy of title insurance.
- b. There shall be no pending proceedings or actions of any kind whatsoever, or judgments or claims of any nature whatsoever, pending against the Sellers with respect to the above described real estate.
- c. The above referenced survey of the above described real estate shall disclose that there are no rights-of-way, easements or building set back requirements on or applicable to the respective tracts which would interfere with the development or use of any of the tracts by the City as a fire training facility or as the location of a governmental building; that there are no material encroachments or projections on the property by structures, facilities or improvements on adjoining property.
- 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 or other hazardous substances and shall furthermore not discover soil, drainage or subsurface conditions which render the property not suitable for use as a fire training facility.
- 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 one or more of the above described tracts.

The City shall have a period from the date of receipt of the commitment for an owners' policy of title insurance until the date of closing, 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 Sellers specifying, in reasonable detail, all conditions precedent (condition notice) which have not been met. Upon receipt of such condition notice, the Sellers, 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 Sellers elect to undertake such action as is necessary to satisfy the conditions precedent identified in a condition notice, the Sellers 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 Sellers fail to satisfy such conditions precedent, the City may elect to terminate this Agreement or waive such unsatisfied condition precedent. Unless the City has provided a condition notice to the Sellers in the manner and within the time specified herein prior to closing, 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 Sellers' performance of their obligations under this Agreement, the City shall be obligated to consummate the purchase transactions described above.

9. ENVIRONMENTAL WARRANTIES. The Sellers hereby represent and warranty that during their period of ownership, the Sellers, their 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 Sellers have no actual notice or knowledge of any prior violations of environmental laws effecting the tracts.

10. TAXES. The Sellers shall pay all real estate taxes for 2005 and all prior years which are levied on the above described real estate prior to the date of closing.

11. CLOSING EXPENSES. The Seller shall pay documentary stamps and half of the costs of preparing closing documents and the closing conference. The City shall pay for half of the cost of closing documents and the closing conference and shall pay for recording the deed.

12. SECTION 1031 EXCHANGE. The parties understand and acknowledge that the Sellers may intend to treat the sale of any one or more of the above described tracts as a "like-kind" exchange pursuant to Internal Revenue Code Section 1031. Accordingly, the parties agree to cooperate further, to facilitate a Section 1031 exchange if the Sellers' choose to do an 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. EMINENT DOMAIN. The City of Grand Island is authorized to use eminent domain to condemn property for a fire training facility by Neb. Rev. Stat., §19-709 and this agreement was negotiated with knowledge that the City could use its eminent domain authority to acquire this property if negotiations were not successful.

14. SELLER'S RIGHTS TO RENTS AND FIXTURES. The Sellers shall receive and retain all rentals accrued prior to the date of closing and as set forth above in paragraph 7 above.

15. 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

Attn: Mayor

100 East First Street

P.O. Box 1968

Grand Island, NE 68802-1968

Mr. & Mrs. Melvin W. Meyer

409 Rosewood Circle

Grand Island, NE 68803

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

17. ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the City and Sellers, 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.

18. 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.

BUYER:

Attest:

CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation, Buyer

RaNae Edwards, City Clerk

By: _____
Jay Vavricek, Mayor

Approved as to form by City Attorney _____
Approved by Resolution 2005- _____

STATE OF NEBRASKA)
) SS.
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Jay Vavricek, Mayor on behalf of the City of Grand Island, Nebraska, a municipal corporation.

Notary Public

SELLER:

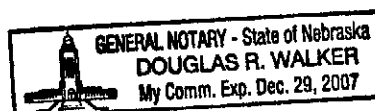
Melvin W. Meyer, Seller

JoAnn. Meyer, Seller

STATE OF NEBRASKA)
) SS.
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this 22th day of June, 2005, by Melvin W. Meyer and JoAnn Meyer, Husband and Wife.

Notary Public



M.J. LAKE, L.L.C. A Nebraska Limited
Liability Company, Seller

By: Melvin W. Meyer
Melvin W. Meyer, Seller

STATE OF NEBRASKA)
) SS.
COUNTY OF HALL)

The foregoing instrument was acknowledged before me this 27th day of June, 2005,
by Melvin W. Meyer, on behalf of M.J. Lake, A Nebraska Limited Liability Company.

Douglas R. Walker
Notary Public

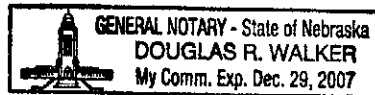


EXHIBIT "A"

Parcel 1: A tract of land comprising a part of the Northeast Quarter (NE1/4) of Section Fifteen (15), Township Eleven (11) North, Range Nine (9) West of the 6th P.M., in Hall County, Nebraska, being more particularly described as follows: Beginning at the Northeast corner of said Section 15; thence Southerly along the East line of said Section 15, a distance of 163.00 feet; thence deflecting right 90°00' 27 feet to the actual place of beginning; thence Southerly parallel to the East line of said Section 15 a distance of 1734.52 feet (measured), 1735.16 feet (record); thence deflecting right 90°21'34" and running Westerly a distance of 647.75 feet (measured), 648.04 feet (record); thence deflecting left 90°30'23" and running Southerly a distance of 675.02 feet (measured), 675.02 feet (record); thence deflecting right 90°32' and running Westerly 66.00 feet North of and parallel with the South line of said NE 1/4 line a distance of 645.50 feet (measured), 646.00 feet (record), to a point on the West line of the East 1/2 of the NE 1/4, said point also being in the East line of a parcel of land conveyed by Union Pacific Land Resources Corporation to Cyprus Mines Corporation by Special Warranty Deed dated March 31, 1989; thence deflecting right 89°17'08" and running Northerly along the West line of the East 1/2 of the NE1/4, and along said East line a distance of 1933.70 feet (measured and record) to a point on the Southeasterly right-of-way line U.S. Highway No. 30; thence deflecting right 64°28'38" and running Northeasterly along said highway right-of-way line a distance of 1143.40 feet (measured), 1143.50 feet (record); thence deflecting right 15°45'52" and running Northeasterly along said highway right-of-way line a distance of 204.78 feet (measured), 205.00 feet (record) to a point of curvature; thence Southeasterly along said highway right-of-way line and on the arc of a curve whose radius is 67.00 feet (the long cord of which deflects right 55°16'00" from the preceding course) a long chord distance of 94.75 feet (measured); thence deflecting left 45°10'12" from the long chord of the last described curve and running Easterly along said highway right-of-way line a distance of 6.00 feet (measured and record) to the actual place of beginning, EXCEPT a tract of land more particularly described in Warranty Deed recorded as Document No. 95-103545; EXCEPT a tract of land more particularly described Warranty Deed recorded as Document No. 200107173 and Deed of Correction recorded as Document No. 200110673.

Parcel 2: A tract of land comprising a part of the Northeast Quarter (NE1/4) of Section Fifteen (15), Township Eleven (11) North, Range Nine (9) West of the 6th P.M., Hall County, Nebraska, and more particularly described as follows: Beginning at the northeast corner of said Section Fifteen (15), thence southerly along and upon the east line of said Section Fifteen (15), a distance of One Hundred Sixty Three (163.0) feet; thence deflecting right 90°00' and running westerly, a distance of Twenty Seven (27.0) feet; thence southerly, parallel with the east line of said Section Fifteen (15), a distance of One Thousand Seventy (1,070.0) feet being the Actual point of beginning; thence continuing southerly along the last described course a distance of Six Hundred Sixty Five (665.0) feet; thence deflecting right 90°21'34" and running westerly, a distance of Six Hundred Forty Seven and Seventy Five Hundredths (647.75) feet; thence deflecting left 90°30'23" and running southerly, a distance of Six Hundred Seventy Five and Nine Hundredths (675.09) feet to a point Sixty Six (66.0) feet north of the south line of said Northeast Quarter (NE1/4); thence westerly parallel with the south line of said Northeast Quarter (NE1/4) a distance of Six Hundred Forty Five and Fifty Four Hundredths (645.54) feet to a point on the west line of the East Half of the Northeast Quarter (E1/2 NE1/4); thence northerly along and upon the west line of said East Half of the Northeast Quarter (E1/2 NE1/4) a distance of Nine Hundred Fifty (950.0) feet, thence easterly, a distance of Eight Hundred (800.0) feet, thence running northeasterly a distance of Six Hundred Twenty Five (625.0) feet to the Actual point of beginning.

R E S O L U T I O N 2005-201

WHEREAS, on June 14, 2005, the City of Grand Island held a public hearing and approved the purchase of the two tracts of land from Melvin W. Meyer and Jo Ann Meyer, husband and wife, and M.J. Lake, L.L.C., a Nebraska limited liability company; and

WHEREAS, such land is commonly known as 244 Stuhr Road and 304 Stuhr Road, and is legally described on Exhibit "A" attached hereto and incorporated by this reference; and

WHEREAS, the parties have negotiated a purchase price for the property of \$583,900, with \$10,000 to be paid by the City upon the approval and execution of an Agreement for Warranty Deed, and the remaining \$573,900 to be paid by the City at closing scheduled for December 1, 2005; and

WHEREAS, the appraised value of the property is \$583,900; and

WHEREAS, an Agreement for Warranty Deed setting out the terms and conditions for the conveyance of such property has been reviewed and approved by the City Attorney.

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

1. The acquisition of the property legally described on Exhibit "A" attached hereto at the purchase price of \$583,900 is hereby approved, with \$10,000 to be paid by the City upon approval and execution of the Agreement for Warranty Deed, and the balance of \$573,900 to be paid by the City at the closing.

2. The Agreement for Warranty Deed between the City and Melvin W. Meyer and Jo Ann Meyer, husband and wife, and M.J. Lake, L.L.C., a Nebraska limited liability company, is hereby approved; 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 12, 2005.

RaNae Edwards, City Clerk

Approved as to Form <input type="checkbox"/> _____ July 7, 2005 <input type="checkbox"/> City Attorney
