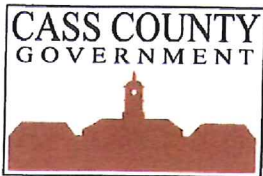


JUN 29 2020



MEMORANDUM

**Highway
Department**

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

TO: Cass County Commission

FROM: Jason Benson, Cass County Engineer *for: on Soucy*

DATE: June 23, 2020

SUBJECT: Regular Agenda Item for July 6, 2020 Commission Meeting:
Phillips Home Buyout

Attached are the documents for Phillips Home Buyout located 2623 173 Ave SE, Argusville, ND in section 13 of Harwood Township near the confluence of the Sheyenne and Red Rivers. Document include the purchase agreement and deed restriction. Half cent sales funding was previously approved for this buyout. The property will be deed restricted so no new structures can be built on this property in the future. The estimated cost of this work is between \$145,000 & \$155,000 depending upon how the quotes come in for asbestos testing, removal and demolition.

SUGGESTED MOTION: AUTHORIZE COUNTY ENGINEER TO PROCEED WITH THE PHILLIPS HOME BUYOUT SUBJECT TO STATE'S ATTORNEYS APPROVAL.

J:\Admin-Eng\Commission Corrsp\2020 Commission Correspondence\Phillips Home Buyout\Agenda Memo Phillips Home Buyout 062320.docx

1201 Main Avenue West
West Fargo, North Dakota
58078-1301

701-298-2370
Fax: 701-298-2395

PROPERTY ACQUISITION APPROVAL REQUEST

COMPANY REQUESTING PROPERTY ACQUISITION:

Daniel Phillips, 2623 173rd Ave SE, Argusville, ND 58005

DATE OF REQUEST: June 23, 2020

DATE OF EXPECTED RETURN TO THE COMMISSION OFFICE: July 6, 2020

DEPARTMENT HEAD REQUESTING SIGNATURE: **Jason Benson, 701-298-2372**

FOR:


STATE'S ATTORNEY SIGNATURE: _____

STATE'S ATTORNEY COMMENTS: _____

PORTFOLIO COMMISSIONER SIGNATURE: _____

Attached are the documents for Phillips Home Buyout and Deed Restriction located 2623 173 Ave SE, Argusville, ND in section 13 of Harwood Township near the confluence of the Sheyenne and Red Rivers. Half cent sales funding was previously approved for this buyout. The property will be deed restricted so no new structures can be built on this property in the future. The estimated cost of this work is between \$145,000 & \$155,000 depending upon how the quotes come in for asbestos testing, removal and demolition.

SUGGESTED MOTION: AUTHORIZE COUNTY ENGINEER TO PROCEED WITH THE PHILLIPS HOME BUYOUT SUBJECT TO STATE'S ATTORNEYS APPROVAL.

PURCHASE AGREEMENT

Property Address: 2623 173rd Ave. SE, Argusville, North Dakota 58005-9779

- 1) **PARTIES:** This Purchase Agreement is made this _____ day of June, 2020, by Daniel J. Phillips (SSN: _____) and Melissa L. Phillips (SSN: _____), Husband and Wife, hereinafter "Seller", and Cass County, hereinafter, "Buyer".
- 2) **SALE OF PROPERTY:** Seller is the owner of that certain real estate located at 2623 173rd Ave. SE, Argusville, ND in Cass County, North Dakota whose tax parcel identification Numbers are:

44-0000-00440-020

And legally described as:

THAT PART OF THE NW 1/4 AND THE SW 1/4 OF SECTION 13, TOWNSHIP 141 NORTH, RANGE 49 WEST OF THE 5TH P.M., CASS COUNTY, NORTH DAKOTA.

*SEE ATTACHED LEGAL EXHBIT

- 3) **OFFER/ACCEPTANCE:** In consideration of the mutual agreements herein contained, Buyer offers and agrees to purchase, and Seller agrees to sell and hereby grants to Buyer the exclusive right to purchase the "Residence/Dwelling" located on the above listed property.
- 4) **PERSONAL PROPERTY INCLUDED IN SALE:** There are no items of personal property or fixtures owned by Seller and currently located on the Property which are included in this sale.
- 5) **PURCHASE PRICE AND TERMS:**

A. **PURCHASE PRICE:** The total Purchase Price for the RESIDENCE in this sale is One Hundred Seventy-one Thousand Two Hundred Seventy and No/100ths Dollars (\$171,270.00), Land shall remain

B. **TERMS:**

- (1): **EARNEST MONEY:** \$100.00 earnest money shall be paid by Buyer to the Seller, the agreement to which is hereby acknowledged.
- (2): **BALANCE DUE SELLER:** *See attached breakdown of the estimated cost(s) and approximate net settlement.
- (3): **REMAINING PROPERTY/PARCELS SHALL BE DEED RESTRICTED.**
PIN: 44-0000-00440-020 and 44-0000-00430-010
- (4): **DOCUMENTS TO BE DELIVERED BY SELLER.** In addition to the Deed Restriction required at paragraph 5B (3) above, Seller shall deliver to the Buyer:
 - a. Abstract of title (if applicable), upon execution of this Purchase Agreement.
 - b. ~~Well disclosure certificate, if required, or, if there is not a well on the Property, the Warranty Deed given pursuant to subparagraph (4) above must include the following statement:~~
"The Seller certifies that the seller does not know of any wells on the described real property."
 - c. ~~Such other documents as may be reasonably required by Buyer's title examiner or title insurance company.~~

- 6) **CONTINGENCIES:** Buyer's obligation to buy is contingent upon the following:
- A. Buyer's determination of marketable title pursuant to paragraph 11 of this Agreement; and
 - B. Approval of this Agreement by the County of Cass.
- 7) **CLOSING DATE:** The closing date of the sale of the "Residences/Dwelling" shall take place on or before July 15th, 2020.
- 8) **ENVIRONMENTAL INSPECTION:** Buyer and its agents shall have the right to enter upon the Property after the date of this purchase agreement for the purpose of inspecting the Property and conducting such environmental examination and test as Buyer deems necessary. Buyer agrees to indemnify the Seller against any liens, claims, losses, or damage occasioned by Buyer's exercise of its right to enter and work upon the Property. Buyer agrees to provide Seller with a copy of any report prepared as a result of such examination and tests.
- 9) **REAL ESTATE TAXES:**
- A. Seller will pay at, or prior to, closing all real estate taxes due and payable in the year previous to date of closing and prior years on the Property.
 - B. Buyer and Seller shall prorate to date of closing the real estate taxes due and payable in the year of closing on the Property.
- 10) **SPECIAL ASSESSMENTS:**
- A. Seller shall pay at, or prior to, closing the balance of all special assessments levied prior to closing, including assessments certified for payment with real estate taxes payable in 2020.
 - B. Seller shall pay any deferred real estate taxes or special assessments, payment of which is required as a result of the closing of this sale.
 - C. Notwithstanding any other provision of this Purchase Agreement, Seller shall at all times be responsible to pay special assessments, if any, for delinquent sewer or water bills, removal of diseased trees prior to the date of this Purchase Agreement, snow removal, or other current services provided to the Property by assessing authority while the Seller is in possession of the Property.
- 11) **MARKETABILITY OF TITLE:** Buyer shall, at its expense and within a reasonable time after Seller's acceptance of this agreement, obtain commitment for title insurance ("commitment") for the Property. Buyer shall be allowed ten (10) business days after receipt of the commitment to examine title and make objections, which shall be made in writing or deemed waived. Buyer shall have ten (10) business days after receipt of the commitment to examine the same and to deliver written objections to title, if any, to Seller. Seller shall have until the Closing Date (or such later date as the parties may agree upon) to make title marketable, at the Seller's cost. In the event that title to the Property cannot be made marketable or is not made marketable by the Seller by the closing date, then, at the option of the Buyer, Buyer may proceed to acquire title of the Property by eminent domain proceeding, Seller agrees to stipulate to entry of an award of court appointed commissioners in the amount of the Purchase Price as the value of Property and Seller agrees to defend, indemnify and hold Buyer harmless from the duty to pay additional amounts to any other party in consideration of the taking of the Property in said eminent domain proceedings.

12) CLOSING COSTS AND RELATED ITEMS: Buyer will pay: (a) the closing fees charged by the title insurance or other closing agent, if any, utilized to close the transaction contemplated by this Agreement; (b) the premium for title insurance policy, if any, obtained by the Buyer; (c) any transfer taxes and recording fees required to enable the Buyer to record its deed from Seller under this Agreement.

13) POSSESSION/REMOVAL OF PERSONAL PROPERTY/UTILITIES/ESCROW:

- A. Possession.** Seller shall transfer title to the Property and Fixtures to the Buyer as of the closing date. Occupancy will transfer on or before July 15th, 2020 and be governed by the attached Occupancy Agreement at Addendum A, which is part of this agreement.
- B. Removal of Property.** Seller agrees to remove from the Property all debris and items of Seller's personal property not included in this sale prior to closing date.
- C. Utilities and Maintenance.** Seller agrees to pay all charges for sewer/septic, water, electric, gas/propane, and cable television during the time that the Seller is in possession. Seller shall be responsible for all repairs and costs of repairs and maintenance, including, but not limited to, plumbing, electrical, structural deficiencies, all appliances and mechanical problems as long as they occupy the property. The same as if they still owned the property.
- D. No encumbrances.** Seller agrees not to place any liens or encumbrances on the Property after the date of this Purchase Agreement.
- E. Escrow.** Upon closing and execution of this Agreement, Seller agrees to deposit into escrow the sum of **\$25,000.00** (the "Escrowed Funds") from the purchase price, to be held by Agent in a non-interest-bearing account. Within 7 days after requested by Agent, Buyer shall provide to Agent (with copy to Seller) evidence of expenses incurred for the removal and disposal of personal property and for payment of utility charges for services provided to the Subject Property prior to date of possession, if any. Agent shall reimburse Buyer for the incurred expenses from the Escrowed Funds within 7 days following receipt of such evidence from Buyer.

14) REMOVAL OF HAZARDOUS MATERIAL: Seller, prior to vacation of the Property, shall remove all substances which, under state or federal law, must be disposed of at an approved disposal facility. This includes, but is not limited to, used oil, paints, solvents, fertilizers, poisons, and the like.

15) DISCLOSURE; INDIVIDUAL SEWAGE TREATMENT SYSTEM: Seller discloses that there is an individual sewage treatment system on or serving the Property.

- 16) SELLER'S WARRANTIES:** Seller warrants that buildings are entirely within the boundary lines of the Property. Seller warrants that there is a right of access to the real Property from a public right of way. Seller warrants that there has been no labor or material furnished to the Property for which payment has not been made. Seller warrants that there are no present violations of any restrictions relating to the use or improvement of the Property. These warranties shall survive the closing of this transaction.
- 17) NO MERGER OF REPRESENTATIONS, WARRANTIES:** Notwithstanding any provision of law or court decision to the contrary, representations and warranties contained in this Purchase Agreement shall not be merged into any instruments or conveyance delivered at Closing, but instead shall survive closing, and the parties shall be bound accordingly.
- 18) NO BROKER INVOLVED:** Seller and Buyer represent and warrant to each other that there is no broker involved in this transaction with whom it has negotiated or to whom it has agreed to pay a broker commission or finder's fee in connection with negotiations for the sale of the Property.
- 19) ENTIRE AGREEMENT; AMENDMENTS:** This Purchase Agreement constitutes the entire agreement between the parties and no other agreement prior to this Purchase Agreement or contemporaneous herewith shall be effective except as expressly set forth or incorporated herein. Any purported amendment shall not be effective unless it shall be set forth in writing and executed by both parties or their respective successors or assigns.
- 20) BINDING EFFECT; ASSIGNMENT:** This Purchase Agreement shall be binding upon an inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.
- 21) NOTICE:** Any notice, demand, request or other communication which may or shall be given or service by the parties shall be deemed to have been given or service on the date the same is deposited in the United States Mail, registered or certified, postage prepaid and addressed as follows:

SELLER: Daniel J. Phillips and Melissa L. Phillips
(Fee) 2623 173rd Ave. SE
Argusville, North Dakota 58005-9779

BUYER: County of Cass
1201 West Main Avenue
West Fargo, ND 58078

- 22) SPECIFIC PERFORMANCE:** This Purchase Agreement may be specifically enforced by the parties, provided that any action for specific enforcement is brought within six months after the date of the alleged breach. This paragraph is not intended to create an exclusive remedy for breach of this agreement; the parties reserve all other remedies available at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date written above.

SELLERS:

Daniel J. Phillips

Melissa L. Phillips

BUYER:

CASS COUNTY

By: _____

By: _____

Phillips - 2623 173 Ave SE, Argusville, ND 58005

	Item	Cost Estimate
	Acquisition Value (Assessed Value \$155,700 X 1.10)	\$171,270
1	Project Planning	\$0
2	Abstract Updating	\$0
3	Legal	\$0
4	*Asbestos Survey	\$1,000
5	*Asbestos Removal	\$20,000
6	*Lead-Based Paint Survey	\$0
7	*Demolition	\$25,000
8	Management	\$0
	Total	\$217,270
	10% of Total	\$21,727
	Items 1 through 8 Total	\$46,000
	Estimated House Value	\$171,270
	10%	\$21,727
	*Amount Received for Property Less the 10% costs.	\$149,543

***ESTIMATED COSTS**

DEED RESTRICTED

HOUSE TO BE REMOVED/DEMOLISHED

*5 OUTBUILDINGS TO REMAIN

Government Lot Four (4) and that part of the Northeast Quarter (NE1/4) of the Southwest Quarter (SW1/4) of Section Thirteen (13), Township One Hundred Forty-one (141), Range Forty-nine (49), Cass County, North Dakota, described as follows: Beginning at a point on the east and west quarter line of said Section Thirteen (13), which is 753 feet west of the center of said Section Thirteen (13); thence running south a distance of 173 feet and 6 inches; thence running West on a line parallel with the south line of said Section 235 feet, more or less, to the east bank of the Shoyenne River; thence running northerly up, along the east bank of the Shoyenne River to the point of intersection of said quarter line with said river; thence East along said east and west quarter section line to the place of beginning. Said tract contains 37.13 acres, more or less.

Together with an easement for the purpose of ingress and egress lying in Government Lot Three (3) of Section Thirteen (13), Township One Hundred Forty-one (141), Range Forty-nine (49), Cass County, North Dakota, described as the West 20 feet of said Government Lot Three (3) of said Section Thirteen (13).

AND the following

That part of the Southwest Quarter (SW1/4) of Section Thirteen (13) in Township One Hundred Forty-one (141) North, of Range Forty-nine (49), West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows: Beginning at a point on the East-West Quarter line of said section Thirteen (13) which is Seven Hundred Fifty-three (753.00) feet West of the center of said SW1/4 a distance of 275.00 feet; thence North 86°49'14" East (assumed bearing) along the North line of said SW1/4 a distance of 275.00 feet; thence South 03°10'46" East a distance of 275.00 feet; thence North 59°59'53" West a distance of 340.92 feet; thence North 03°10'46" West a distance of 173.50 feet to the point of beginning. Said tract contains 1.73 acres, more or less, and is subject to rights-of-way and easements of record.

Addendum A

OCCUPANCY AGREEMENT

THIS AGREEMENT entered into this _____ day of June 2020, by and between Daniel J. Phillips, a single person, ("Occupant" or "Seller") and the County of Cass, ("Buyer" or "County").

RECITALS

- A. Occupant and Buyer have entered into a Purchase Agreement dated June _____, 2020 ("Agreement") for the sale of the Residences/Dwelling located at 2623 173rd Ave. SE, Argusville, ND 58005-9779.
- B. The parties desire to close the sale of the Subject Property on or before July 15th, 2020 and that Occupant deliver possession to Buyer on or before September 30th, 2020.

AGREEMENT

The parties agree as follows:

1. Delivery of Possession. Occupant shall deliver possession of the Subject Residences/Dwelling to Buyer no later than 11:59 p.m. on July 15, 2020. The Agreement shall be deemed amended as necessary to be consistent with the terms of this Occupancy Agreement.
2. Rent. Occupant may occupy the Subject Residences through September 30, 2020 without payment of rent. Occupant shall be responsible for all repairs and costs of repairs and maintenance, including, but not limited to, plumbing, electrical, structural deficiencies, all appliances and mechanical problems. The same as if they still owned the property.
3. No Damage. Occupant agrees not to cause damage to the Subject Property or to any structure located on the Subject Property and agrees to deliver possession of the Subject Property to the Buyer in substantially the same condition as existed on the date the parties entered into the Agreement.
4. Utility Bills. Occupant agrees to pay for all utility services to the Subject Property through the last day of their occupancy. Utility services include the following: sewer and water, electricity, gas, telephone, garbage collection and cable television.
5. Uninsured Damages/Insurance. Occupant is responsible for any and all damages that may occur to the Subject Property before they vacate the Subject Property. At all times during their occupancy of the Subject Property Occupant shall, at Occupant's own expense, procure and maintain liability insurance against claims for bodily injury, death and property damage occurring on or about the Subject Property in amounts reasonably satisfactory to County and naming County as an additional insured thereon and a policy of insurance covering their personal property. Buildings (if any) on the Subject Property shall be insured by Occupant against loss by fire, extended coverage perils, vandalism, malicious mischief and windstorm in the amount of present coverage or if none in force then in an amount not less than the current market value of the Subject Property during the entire period of the Occupant's possession of the Subject Property, such policy or policies of insurance to be endorsed to show the County's interest. The insurance policy or policies shall contain a loss payable clause in favor of County which provides that County's right to recover under the insurance shall not be impaired by any acts or

omissions of Seller and that County shall otherwise be afforded all rights and privileges customarily provided a mortgagee under the so-called standard mortgage clause.

County shall be free from liability and claims for damages by reason of injuries occurring on or after the date of this Occupancy Agreement to any person or persons or property while on or about the Subject Property. Seller shall defend and indemnify County from all liability, loss, costs and obligations, including reasonable attorneys' fees, on account of or arising out of any such injuries. However, Seller shall have no liability or obligation to County for such injuries which are caused by the negligence or intentional wrongful acts or omissions of County.

SELLER:

BUYER: County of Cass

By: _____
Daniel J. Phillips

By: _____
Brian A. Busta

Addendum B

Cass County reserves the right to enter onto and use the property for project related activities immediately after closing.

DEED RESTRICTION

Pursuant to Section 309 of the Cass County Subdivision Ordinance, this **DEED RESTRICTION** is entered into this _____ day of _____, 2020, by

Owner(s): Daniel J. Phillips and Melissa L. Phillips

1. **PURPOSE**

The owner recognizes the following agreement is set forth to encourage orderly and economically-feasible growth, prevent new developments from creating economic strains on county residents, protect the county's valuable farmland and agricultural traditions and promote development that will more easily convert to an urban environment and implement the goals and objectives established by the most current Cass County Comprehensive Plan. The following agreement will promote small, truly rural developments that will mesh more easily with existing agricultural land and activities and will encourage larger urban style subdivisions to develop in the urban fringe and other areas with supportive infrastructure. Developments built beyond the density restriction will be constructed with full supportive urban infrastructure, ensuring developments that will more easily transition into an urban development upon annexation without extensive and costly infrastructure upgrades.

2. **AGREEMENT**

WHEREAS, for the granting of the division described herein pursuant to Section 309 of the Cass County Subdivision Ordinance, acknowledged herein as good and valuable consideration, the Owner(s) consent and agree to the filing of this **DEED RESTRICTION**, and understand that its effect will be to limit any further residences, divisions, or nonagricultural development on the restricted parcel described herein, except as may be permitted by Section 309.02 of the Cass County Subdivision Ordinance and any amendment thereto:

- A. This **DEED RESTRICTION** shall terminate at such time the deed restricted parcel is completely within the extraterritorial (ET) boundaries of an incorporated city of Cass County.
- B. This **DEED RESTRICTION** shall terminate at such time the restricted parcel is completely annexed by an incorporated city of Cass County; or
- C. Any further subdivision of the restricted parcel will conform to full urban design standards and the strictest requirements outlined within Article VI of the Cass County Subdivision Ordinance, including, but not limited: paved roads with curb and gutter, a paved access road, municipal sewer system, public water supply system with functioning fire hydrants, storm water facilities, street lights, street trees, street signs, sidewalks, bike paths, and park dedications.

WHEREAS, this **DEED RESTRICTION** shall run with the land in perpetuity and be binding on all owners, successors, heirs, assigns, lessees, users, or parties having or acquiring any right, title, or interest in the restricted parcel herein described or any part thereof.

WHEREAS, the restricted parcel described herein meets the criteria established in Section 308 of the Cass County Subdivision Ordinance.

WHEREAS, this **DEED RESTRICTION** shall expire at such time any of the exceptions under Section 309.02 of the Cass County Subdivision Ordinance, and any amendment thereto, apply to the restricted parcel described herein. Upon the written request of any interested party, the Cass County Engineer is authorized to record an instrument with the Cass County Recorder, which declares such an exception applies to the restricted parcel described herein and the **DEED RESTRICTION** is expired.

3. VIOLATION OF DEED RESTRICTION

In the event of a violation of this **DEED RESTRICTION**, the penalties and remedies provided under Section 906 (Penalties and Violations) of the Cass County Subdivision Ordinance and North Dakota law shall apply.

4. LEGAL DESCRIPTION OF THE RESTRICTED PARCEL

Government Lot Four (4) and that part of the Northeast Quarter (NE1/4) of the Southwest Quarter (SW1/4) of Section Thirteen (13), Township One Hundred Forty-one (141), Range Forty-nine (49), Cass County, North Dakota, described as follows: Beginning at a point on the east and west quarter line of said Section Thirteen (13), which is 753 feet west of the center of said Section Thirteen (13); thence running south a distance of 173 feet and 6 inches; thence running West on a line parallel with the south line of said Section 235 feet, more or less, to the east bank of the Sheyenne River; thence running northerly up, along the east bank of the Sheyenne River to the point of intersection of said quarter line with said river; thence East along said east and west quarter section line to the place of beginning. Said tract contains 37.13 acres, more or less

Together with an easement for the purpose of ingress and egress lying in Government Lot Three (3) of Section Thirteen (13), Township One Hundred Forty-one (141), Ranger Forty-nine (49), Cass County, North Dakota, described as the West 20 feet of said Government Lot Three (3) of said Section Thirteen (13).

AND the following

That part of the Southwest Quarter (SW1/4) of Section Thirteen (13) in Township One Hundred Forty-one (141) North, of Ranger Forty-nine (49), West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows: Beginning at a point on the East-West Quarter line of said section Thirteen (13) which is Seven Hundred Fifty-three (753.00) feet West of the center of said section Thirteen (13); thence North 86°49'14" East (assumed bearing) along the North line of said SW1/4 a distance of 275.00 feet; thence South 03°10'46" East a distance of 375.00 feet; thence North 56°56'53" West a distance of 340.92 feet; thence North 03°10'46" West a distance of 173.50 feet to the point of beginning. Said tract contains 1.73 acres, more or less, and is subject to rights-of-way and easements of record.

PIN: 44-0000-00440-020 AND 44-0000-00430-010

IN WITNESS of the restrictions, the Owner(s) have caused this DEED RESTRICTION to be executed effective as of:

Daniel J. Phillips

Date

Melissa L. Phillips

Date

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 2020, before me, a notary public within and for said county and state, personally appeared Daniel J. Phillips and Melissa L. Phillips, known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed same.

Notary Public

The foregoing instrument was acknowledged before me, this _____ day of _____, 2020, by Jason Benson, County Engineer.

County Engineer Signature

Date

State of North Dakota)
) ss
County of Cass)

On this _____ day of _____, 2020, before me, a notary public within and for said county and state, personally appeared Jason Benson, County Engineer, known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed same as their free act and deed.

Notary Public