



Administration

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MEMO

TO: County Commission

FROM: Robert W. Wilson

Date: January 22, 2024

Subject: Purchase Agreement – RDJ Building

At the Commission meeting on October 16th the Board approved an updated purchase offer for the RDJ Building in the amount of \$825,000. Since that time the State's Attorney's Office and the Fargo Parks District have coordinated to develop a purchase agreement that meets the needs of both parties. At the meeting on February 5th the Board will consider authorization of the attached agreement.

The agreement includes the following terms:

- Closing will be scheduled for February 28, 2024
- Parks District Offices currently using the facility will continue to operate out of the facility until June 30, 2024.
- The Parks District has informed other building tenants about the status of the transaction.

SUGGESTED MOTION: Authorize the Chair to Sign Purchase Agreement with the Fargo Parks District for the Robert D. Johnson Building.



CONTRACT APPROVAL

REQUIRED BY DEPARTMENT:

DEPARTMENT: Administration DATE OF REQUEST: 01-31-2024

COMPANY REQUESTING CONTRACT: Fargo Park District

BRIEF PROJECT DESCRIPTION: Purchase agreement for the Robert D. Johnson Building

X NEW CONTRACT OR CONTRACT RENEWAL

REQUIRED BY STATE'S ATTORNEY OFFICE:

STATE'S ATTORNEY SIGNATURE: _____ DATE _____

STATE'S ATTORNEY COMMENTS:

REAL ESTATE PURCHASE AGREEMENT

This Agreement is entered into on February ____, 2024, by and between, **The Park District of the City of Fargo**, a municipal subdivision and park district under Chapter 40-49 N.D.C.C., whose address is 701 Main Avenue, Fargo, North Dakota (“Seller”), and **County of Cass, in the State of North Dakota**, a municipal corporation, whose address is PO Box 2806, Fargo, North Dakota 58108-2806 (collectively “Buyer”), who agree as follows:

1. **Purchase**. Seller agrees to sell, and Buyer agrees to buy, the following described real property (the “Property”) located in **Cass County**, North Dakota:

Lots 1, 2, 3, 11 and 12, Block 27 of the Original Townsite of Fargo, Cass County, North Dakota.

2. **Closing Date**. The closing shall occur at Kennelly Business Law on February 28, 2024 (the “Closing Date”), or as soon as mutually agreed upon by the parties.

3. **Purchase Price**. Buyers agree to pay Seller as and for the purchase price of the Property the sum of \$825,000.00. The Purchase Price shall be due and owing in certified funds on the Closing Date.

4. **At Closing**. On the Closing Date and upon receipt of the Purchase Price, Seller shall execute, acknowledge and deliver title to Buyer in the form of a Warranty Deed.

5. **Fees and Costs**. Seller will be responsible for the fees and expenses incurred in providing an updated abstract of title to Buyer, *providing clear and marketable title*, and recording of releases and satisfactions. Buyer will be responsible for all other fees and expense incurred to close this transaction, including any title opinion fees, title insurance premium, and recording costs. **Each party** shall be responsible for their own attorney’s fees.

6. **Real Estate Taxes and Special Assessments**. Seller shall be responsible for all real estate taxes and special assessments for the year 2023. Buyer shall be responsible for all 2024 and subsequent real estate taxes and special assessments. Buyer shall assume all special assessments which have not been certified for collection on the Closing Date.

7. **Representations and Warranties of Seller**. Seller hereby warrants and represents:

- a. Seller is the sole owner of the Property and has full power, authority and right to execute, deliver and perform this Agreement. Attached this Agreement as Exhibit “A” is the Resolution Approving the Sale of the Property by the Seller’s Board of Commissioners.
- b. Seller states there are no existing or pending claims, lawsuits, proceedings or other legal, quasi-legal, or administrative challenges concerning the Property or the ownership, operation or any condition thereon, and no such claim, lawsuit, proceeding or challenge is threatened by any person or entity.

- c. To the best of Seller's knowledge, Seller warrants no environmental defects, or any hazardous materials exist with or on the Property, except as otherwise fully disclosed to Buyers in writing prior to Closing.
- d. Sellers Representations and Warranties contained herein shall survive Closing.

8. **Title**. Seller warrants that title to the Property at the Closing Date will be subject only to the following exceptions:

- a. Covenants, conditions, restrictions, declarations and easements of record, if any;
- b. Building, zoning and subdivision laws and regulations; and
- c. The leases attached as Exhibit "A" to this Agreement.

9. **Contingencies**. The obligation of Buyer to close hereunder is contingent upon and satisfaction or waiver by Buyer of each of the following conditions on or before the Closing Date:

- a. **Representations**. The representations and warranties of Seller contained in this Agreement will be true and complete now and, on the Closing Date;
- b. **Title**. Title to the Property shall have been found acceptable by Buyer, or been made acceptable, in accordance with the requirements and terms of Paragraph 8;

If any of the foregoing contingencies have not been satisfied or waived by Buyer on or before the Closing Date, then Buyer may terminate this Agreement, at Buyer's option, by written notice to that effect to Seller, in which event this Agreement shall terminate and be of no further force and effect. All the conditions set forth above are for the sole and exclusive benefit of Buyer, and Buyer shall have the unilateral right to waive any conditions by notice to Seller.

10. **Additional Terms and Conditions**. The purchase of the Property shall be subject to the following additional terms and conditions:

- a. **No Diminishing or Encumbering Title**. Seller agrees not to convey, mortgage or do any act to diminish or encumber the title to the Property while this Agreement remains in force.
- b. **No Broker**. No real estate broker or agent has been engaged or hired by either party to this Agreement and no commission or any other compensation is owed to any real estate broker or agent, notwithstanding any attorney's fees which may be owed by either party in preparation of this Agreement.

- c. Possession. Seller shall deliver possession of Property to Buyer at the Closing Date. Seller shall assign all leases to Buyer at the Closing Date. However, Seller shall be allowed to continue to operate as it currently operates on the Property, without obstruction from Buyer, until June 30, 2024. Seller shall be considered a tenant of the Property from the Closing Date through June 30, 2024, but not shall not be obligated to pay rent to Buyer during that time.

11. **Administration and Construction.** This Agreement shall be administered and construed in accordance with the following provisions:

- a. Time. Time is of the essence of this Agreement. Any reference in this Agreement to time periods of less than six (6) days shall in the computation of such time exclude Saturdays, Sundays and legal holidays. Any reference in this Agreement to time periods of six (6) days or greater shall in the computation of such time include Saturdays, Sundays and legal holidays. Any time period provided in this Agreement which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. on the next full business day.
- b. Notices. All notices or other communication provided for in this Agreement shall be given in writing by registered or certified mail which, unless otherwise designated by a party, shall be addressed to the addresses shown in Paragraph 1 of this Agreement. As to registered mail, notice shall be deemed served when properly addressed and duly accepted for mailing as registered mail in a branch of the United States Postal Service. As to certified mail, notice shall be deemed served when duly deposited in a United States Postal Service mailbox or at a branch of the United States Postal Service.
- c. Captions. The captions on the paragraphs and subparagraphs of this Agreement are inserted only for the purpose of convenient reference. The captions shall not be used to construe or interpret the Agreement nor to prescribe the scope or intent of the Agreement.
- d. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect its other provisions. The Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.
- e. Entire Agreement. This Agreement constitutes the complete and entire understanding of the parties concerning the conveyance of their Property. Neither party shall be bound by or be liable for any statements, warranties, guarantees, or representations not set forth in this Agreement which may

have been made by any broker, agent, employee or other person representing or purporting to represent a party to this Agreement.

- f. Modification. No change or modification of this Agreement shall be valid unless it is in writing and signed by all the parties to this Agreement.
- g. Survival. The provisions of this Agreement shall survive the closing and shall continue to bind the parties bound by this Agreement.
- h. Recordation. This Agreement shall not be recorded.
- i. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be considered as an original of the Agreement. All executed counterparts shall constitute, and shall have the force and effect, of one and the same document, and shall be binding upon those who execute the Agreement, regardless of whether all parties execute the same document.
- j. Persons Bound by this Agreement. This Agreement shall be binding upon the parties and their successors in interest. The rights and obligations of any party to this Agreement may be exercised or satisfied by that party's legal representative.
- k. Covenants to Run with Property. All covenants, terms and conditions in this Agreement shall run with the Property.
- l. Governing Law. The provisions of this Agreement shall be governed by the laws of the State of North Dakota.

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IN WITNESS OF ITS TERMS AND CONDITIONS, the parties have executed this Agreement.

Dated: February _____, 2024.

SELLER:

Park District of the City of Fargo, a municipal subdivision and park district under Chapter 40-49 N.D.C.C.

By: Susan Faus
Its: Executive Director

Dated: February 5, 2024.

BUYER:

County of Cass, in the State of North Dakota, a municipal corporation

By: Chad Peterson
Chairman of Cass County Commission