



STAFF REPORT

DATE: February 16, 2021

CONSENT

AGENDA ITEM: Purchase Agreement Outlot F for Sanctuary Neighborhood

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

Outlot F in the Sanctuary Development went into tax forfeiture in 2017. The Homeowners Association (HOA) would like to gain ownership of the property since their community septic system is located there. In trying to gain back ownership the HOA contacted Washington County who informed them there were essentially two options to regain ownership. Option 1. Wait for the property to go up for auction and attempt to buy it back. But they risk not being highest bidder. Option 2. The City buy the property from Washington County at a value of \$10,000 and then deed it over to the HOA. (There will be other fees associated with this transfer – see Fiscal Impact section) In 2018, the HOA president had reached out to the City for help in obtaining the property through option 2.

In April 2018, Council gave direction to move forward with purchasing the parcel in exchange for a minor subdivision for the portion likely needed for the TH36/Manning Interchange. Staff has reached out to the MN Land Trust at the time and found they would not be willing to amend the conservation easement over the portion needed for the interchange unless judicial action was taken. Therefore, rather than a subdivision a Memorandum of Understanding between the City and HOA was approved in October 2018.

In May 2019 an amendment was made to the MOU to account for the fact that Washington County planned to retain a portion of the outlot for right of way purposes and convey the remainder to the city. Since Washington County kept some of Outlot F for their own purposes, staff negotiated the price down to \$7,500.

In 2020, the remainder of Outlot F was finally conveyed to the city. A purchase agreement was drafted and reviewed by the Sanctuary HOA consistent with the MOU from 2018/2019.

ISSUE BEFORE COUNCIL:

Should the City Council approve the purchase agreement with the Sanctuary of Lake Elmo Homeowners Association for Outlot F?

PROPOSAL DETAILS/ANALYSIS:

A copy of the purchase agreement, along with the signature page from the HOA, is included in your packet. We are waiting to hear from the HOA if they will purchase title insurance. The next step after approval of the council would be to schedule the closing.

FISCAL IMPACT:

Though the price for the property is \$7,500 there are other fees associate with the process.

1. Basic Sale Price	\$7,500
2. State Deed Fee	\$25.75
3. <u>3% Surcharge</u>	<u>\$300</u>

Total Cost for All Fees and Sale Price \$7,825.75

In addition, staff estimates a not to exceed costs of \$4,000 to cover the legal time into the process so far and additional costs the city will incur in the transfer to the HOA. All of the costs incurred by the City are expected to be reimbursed by the HOA.

OPTIONS:

- 1) Approve the purchase agreement
- 2) Amend and then Approve the purchase agreement
- 3) Do not approve the purchase agreement

RECOMMENDATION:

If removed from the consent agenda:

“Motion to Approve the Purchase Agreement with the Sanctuary HOA.”

ATTACHMENTS

- Purchase Agreement

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into as of the _____ day of _____, 2021 (which shall be the Effective Date of this Agreement) by and between the City of Lake Elmo, a Minnesota municipal corporation (the “**City**”) and Sanctuary of Lake Elmo Homeowners Association, a Minnesota nonprofit corporation (the “**Purchaser**”).

RECITALS

A. On October 16, 2018, the City and the Purchaser entered into that certain Memorandum of Understanding Regarding Outlot F, St. Croix’s Sanctuary (the “**MOU**”) whereby the City agreed to convey the property legally described as: Outlot F, St. Croix’s Sanctuary, according to the recorded plat thereof, County of Washington, State of Minnesota (“**Outlot F**”) to the Purchaser upon the City’s purchase of Outlot F from Washington County through the tax forfeiture sale process.

B. On May 28, 2019, the City and the Purchaser entered into that certain First Amendment to Memorandum of Understanding Regarding Outlot F, St. Croix’s Sanctuary (the “**First Amendment**”) to account for the fact that Washington County had retained a portion of Outlot F for right-of-way purposes and the City would be purchasing the remainder portion of Outlot F and conveying it to the Purchaser for a reduced purchase price.

C. Prior to conveying the remainder portion of Outlot F to the City, Washington County subdivided Outlot F into two parcels. It conveyed the remainder portion to the City. Said parcel is legally described on the attached Exhibit A (the “**Property**”).

D. The City is now the owner of the Property and wishes to convey the Property to the Purchaser. The Purchaser desires to purchase the Property under the terms and conditions provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the following terms and conditions, the parties agree as follows:

1. **SALE AND PURCHASE.** The City hereby agrees to sell to the Purchaser, and the Purchaser hereby agrees to purchase from the City, upon the terms and conditions set forth below, fee simple title to the Property together with any improvements constructed on the Property, including, but not limited to, the community septic system (the “**Improvements**”).
2. **PURCHASE PRICE.** The total purchase price to be paid by the Purchaser to the City for the Property (the “**Purchase Price**”) shall be Seven Thousand Five Hundred Dollars (\$7,500.00).

The Purchase Price, plus the costs provided in this Agreement shall be paid to the City in immediately available funds via a certified check or wire transfer at Closing (as defined in Paragraph 7 hereof).

3. **CONTINGENCIES.** Notwithstanding any other provision in this Agreement to the contrary, the parties agree that the purchase of the Property is subject to the following contingency (which must be accepted or waived on or before the expiration of the Due Diligence Period hereafter defined, unless a different period is expressly provided herein):

- a. Title to the Property shall be acceptable to the Purchaser, in its sole discretion (the “**Title Contingency**”) within the time frames and terms and conditions contained in Paragraph 5.

The Purchaser shall satisfy or waive the Title Contingency in the time prescribed in Paragraph 5 or said Title Contingency shall be deemed to be waived.

On or before that date which is 30 days after the Effective Date hereof (the “**Due Diligence Period**”), the Purchaser shall, by giving written notice to the City, either:

- (i) Terminate this Agreement if the Title Contingency above has not been satisfied; or
- (ii) Waive the Title Contingency and proceed to closing.

If the Purchaser elects to terminate this Agreement under clause (i) above, then upon the City’s receipt of the Purchaser’s written notice of termination, this Agreement shall be null and void and neither party shall have any further obligation to the other.

If the Purchaser elects to waive the Title Contingency and proceed under clause (ii) above, the parties shall proceed to Closing as provided in Paragraph 7 below.

4. **REPRESENTATIONS.** The following representations are being made by the City: (i) that the City owns fee simple title to the Property; (ii) as of the Closing, there will be no obligations or liabilities of any kind or nature whatsoever, including but not limited to any tax liabilities, contract liabilities, or tort liabilities for which or to which the Purchaser or the Property will be liable or subject except for non-delinquent real estate tax obligations; (iii) there are no storage tanks, underground storage tanks, wells, or abandoned wells upon the Property, with the exception of a community septic system; and (iv) the City has not filed, voluntarily or involuntarily for bankruptcy relief within the last year under the United States Bankruptcy Code or has any petition for bankruptcy or receivership been filed against the City within the last year. These representations shall survive Closing indefinitely.

Except as expressly set forth herein, the City makes no warranty or representations whatsoever, express or implied, regarding the condition, merchantability, habitability, tenantability, environmental condition, or the fitness for any particular purpose or use, of

the Property purchased and sold hereunder. The Purchaser acknowledges that it is purchasing the Property "AS IS, WHERE IS, AND WITH ALL FAULTS" and the Purchaser for itself and for its successors and assigns hereby waives, releases, and discharges the City from any and all claims, demands, liabilities, damages, obligations, fines, penalties, costs, and expenses, including (without limitation) reasonable attorneys' fees and disbursements (collectively, the "**Liabilities**"), and covenants not to sue the City for any Liabilities caused by, arising out of, or related to the condition of the Property or any matters related to the Property. Notwithstanding anything contained herein to the contrary, the provisions of this paragraph shall survive Closing indefinitely.

5. **EVIDENCE OF TITLE.** The Purchaser may obtain a commitment for an owner's policy of title insurance ("**Title Commitment**") from a title company of its choice for the Property within 15 days of the Effective Date. The cost of obtaining such Title Commitment and any title search and examination fees shall be paid by the Purchaser. The Purchaser shall be allowed 10 days after the date of receipt of the Title Commitment to examine the same and the making of any objections (the "**Title Objections**"); such objections are to be made to the City in writing or shall be deemed to have been waived. If any Title Objections are so made, the City shall have 10 days from the date of the City's receipt of the Title Objections ("**Outside Seller Response Date**") to confirm in writing to the Purchaser whether it will be able to remove the Title Objections on or prior to the Closing Date, and if not, which of the Title Objections the City is unwilling to remove. The Purchaser shall then have the right to either waive those Title Objections which the City is unwilling to remove, or to terminate this Agreement on or before the earlier of i) five days after the Outside Seller Response Date; or ii) the end of the Due Diligence Period pursuant to the Title Contingency described in Paragraph 3(a) above. If the City fails to remove those Title Objections which the City agrees to remove on or prior to the Closing Date, the Purchaser shall have the option of:
 - a. Declaring this Agreement null and void by written notice to the City; or
 - b. Waiving any defect in title and, in such event, proceeding to close the transaction contemplated by this Agreement on the Closing Date as defined in Paragraph 7 hereof.
6. **DESTRUCTION OR EMINENT DOMAIN.** If, prior to the Closing Date, any insubstantial part of the Property shall be taken by eminent domain, either party shall have the option of canceling this Agreement. If, prior to the Closing Date, all or any substantial part of the Property should be taken, or proceedings are commenced in condemnation with respect thereto, the Purchaser shall have the option to terminate this Agreement. Said options provided in this Paragraph, if exercised by the Purchaser, must be exercised in writing and delivered to the City within the earlier of: (i) 10 days after a request by the City as to whether the Purchaser intends to exercise this option; or (ii) the Closing Date. If the Purchaser so elects to cancel this Agreement in accordance herewith, this Agreement shall thereafter be of no further force and effect.

7. **CLOSING AND POST-CLOSING.** The consummation of the transaction contemplated by this Agreement (“**Closing**”) shall be held at Lake Elmo City Hall, 3880 Laverne Avenue N, Lake Elmo, Minnesota 55042 (or at such other location as the parties shall agree), on the “**Closing Date**” which shall be a date mutually agreed upon by the City and the Purchaser which is within 30 days after the Purchaser has satisfied or waived the Title Contingency.

9.1 On the Closing Date, the City shall deliver to the Purchaser a quit claim deed for the Property (the “**Deed**”); a FIRPTA affidavit; a customary Seller’s affidavit; a bring down certificate reaffirming the representations made in Paragraph 4 hereof; and a closing settlement statement reflecting the economic provisions of the Closing as provided in this Agreement, all in exchange for the payment of the Purchase Price by the Purchaser.

On the Closing Date, the Purchaser shall deliver to the City and the title company the funds required hereunder to satisfy the Purchase Price and as required under the closing statement agreed to among the City, the Purchaser and the title company, a customary form Buyer’s Affidavit in form and substance reasonably required by the title company; evidence reasonably satisfactory to the City and the title company that the signatory has the full right, power, and authority to sign on behalf of the Purchaser, a closing statement pursuant to the terms and conditions of this Agreement, and such other documents as may be reasonably required by the title company.

The Property is currently tax-exempt. The Purchaser shall be responsible for those taxes allocable to the Property as of the date of Closing and thereafter. There are no special assessments currently levied or pending with respect to the Property.

The Purchaser shall pay all state or local transfer, conservation fees, or deed taxes in connection with the Deed to be delivered by the City to the Purchaser. The Purchaser shall pay the cost for preparation of the title commitment, including any search and examination costs, and the cost of its title insurance premium and any policy endorsements it desires. The Purchaser shall pay recording charges in connection with the Deed. The Purchaser shall pay any closing costs charged by the title company to close the transaction. The Purchaser shall pay its own legal counsel fees along with the City’s legal costs associated with drafting the MOU, the First Amendment, this Agreement and closing the transaction, not to exceed \$4,000.00. The Purchaser shall also reimburse the City for the costs paid to Washington County in the amount of \$325.75 related to the City’s purchase of the Property from Washington County. All cost reimbursement to the City shall be paid by the Purchaser to the City at Closing.

8. **AUTHORITY.** Each person executing this Agreement, by his or her execution hereof, represents and warrants that he or she is fully authorized to do so, and that no further action or consent on the part of the party for whom he or she is acting is required for the effectiveness and enforceability of this Agreement against such party following such execution.

9. **BROKER'S FEES.** The City and the Purchaser hereby represent and warrant to the other party that, in connection with this transaction, no third-party broker or finder has been engaged or consulted by it or through such party's actions (or claiming through such party) and is entitled to compensation as a consequence of this transaction. The City and the Purchaser agree to indemnify, defend, and hold the other party harmless against any and all claims of brokers, finders, or the like, and against the claims of all third parties, claiming any right to commission or compensation by or through acts of the indemnifying party or its partners, agents, or affiliates in connection with this Agreement. The indemnifying party's indemnity obligations shall include all damages, losses, costs, liabilities, and expenses, including reasonable attorneys' fees and litigation costs, which may be incurred by the other party.
10. **NOTICES.** Any notice or election herein required or permitted to be given by either party hereto upon the other shall be deemed given in accordance with the provisions of this Agreement, if personally served; sent via facsimile; delivered by nationally recognized overnight courier (Fed Ex, UPS, DHL, *etc.*); or if mailed by United States certified mail, postage prepaid, properly addressed as follows:

If to the Purchaser: Sanctuary of Lake Elmo Homeowners Association
5865 Neal Avenue N #127
Stillwater, MN 55082
Attn: _____

If to the City: City of Lake Elmo
3880 Laverne Avenue North
Lake Elmo, MN 55042
Attn: City Administrator

with a copy to: Kennedy & Graven, Chartered
150 South 5th Street, Suite 700
Minneapolis, MN 55402
Attn: Sarah J. Sonsalla

Each mailed notice or communication shall be deemed to have been given to the party to which it is addressed on the third date after the same is deposited in the United States certified mail, if postage prepaid, properly addressed in the manner above provided, if sent by overnight mail it shall be deemed delivered the day after deposit with the overnight courier, or on the date of delivery if by other means as allowed above, and if by facsimile, with confirmation of successful transmission. The addresses to which notices are to be mailed to either party hereto may be changed by such party by giving written notice thereof to the other party in the manner above provided.

11. **DEFAULT.** In the event of a default by the City hereunder, the Purchaser may terminate this Agreement or bring an action to compel the specific performance of this Agreement in a court of law or equity. In the event of a default by the Purchaser hereunder, the City may terminate this Agreement by providing 30 days written notice as provided by Minnesota

Statutes, or, bring an action to compel the specific performance of this Agreement in a court of law or equity.

12. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which will, for all purposes, be deemed to be an original, and all of which are identical. This Agreement may further be evidenced by facsimile and email scanned signature pages.
13. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the state where the Property is located.
14. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, understandings either oral or written, between them concerning the Property. No subsequent alteration, amendment, change, deletion, or addition to this Agreement shall be binding upon any of the parties hereto unless in writing and signed by both the party against whom enforcement thereof is sought.
15. **FURTHER ASSURANCES.** Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement.
16. **NO THIRD-PARTY BENEFICIARIES.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of the City and the Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.
17. **ASSIGNS.** This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective legal representatives, successors, and permitted assigns. Neither party may assign its rights under this Agreement without the written consent of the other party.
18. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
19. **WAIVER.** The waiver by any party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Agreement.

IN WITNESS WHEREOF, the parties have entered into and executed this Agreement the day and year first above written.

CITY OF LAKE ELMO:

PURCHASER:

**SANCTUARY OF LAKE ELMO
HOMEOWNERS ASSOCIATION**

By: _____
Charles Cadenhead

By: _____

Its: Mayor

Its: _____

By: _____
Julie Johnson

Its: City Clerk

EXHIBIT A

Legal Description of the Property

Outlot F, ST. CROIX SANCTUARY, according to the plat thereof on file and of record in the Office of the Recorder, Washington County, Minnesota, EXCEPT THAT PART Commencing at the northeast corner of the Northeast Quarter of Section 1, Township 29 North, Range 21 West, Washington County, Minnesota; thence South 00 degrees 25 minutes 42 seconds East, bearings are based on the Washington County Coordinate System NAD83/1986, along the east line of said Northeast Quarter a distance of 422.83 feet; thence South 89 degrees 39 minutes 30 seconds West a distance of 17.03 feet to a point on the easterly line of said Outlot F, said point being the point of beginning; thence South 00 degrees 14 minutes 54 seconds East, along the easterly line of said Outlot F, a distance of 430.35 feet; thence South 33 degrees 29 minutes 28 seconds West, along the southeasterly line of said Outlot F, a distance of 120.17 feet; thence South 45 degrees 14 minutes 46 seconds West, continuing along said southeasterly line, a distance of 131.87 feet; thence South 25 degrees 53 minutes 26 seconds West, continuing along said southeasterly line, a distance of 177.14 feet; thence continuing along said southeasterly line a distance of 90.27 feet on a tangential curve, concave to the northwest, said curve having a radius of 105.00 feet and a central angle of 49 degrees 15 minutes 33 seconds; thence South 75 degrees 08 minutes 59 seconds West, along the southerly line of said Outlot F, and tangent to the last described curve, a distance of 70.06 feet; thence continuing along said southerly line a distance of 91.14 feet on a tangential curve, concave to the north, said curve having a radius of 175.00 feet and a central angle of 29 degrees 50 minutes 17 seconds; thence North 14 degrees 59 minutes 16 seconds East, and radial to the last described curve, a distance of 25.00 feet; thence easterly a distance of 78.12 feet along a curve, concave to the north and not tangent to the last described line, said curve having a radius of 150.00 feet, a central angle of 29 degrees 50 minutes 17 seconds and a chord that bears South 89 degrees 55 minutes 52 seconds East for a distance of 77.24 feet; thence North 75 degrees 08 minutes 59 seconds East and tangent to the last described curve, a distance of 40.91 feet; thence North 25 degrees 53 minutes 14 seconds East a distance of 172.70 feet; thence North 00 degrees 15 minutes 05 seconds West a distance of 361.98 feet; thence North 60 degrees 14 minutes 36 seconds West a distance of 293.78 feet; thence North 55 degrees 14 minutes 36 seconds West a distance of 289.35 feet; thence South 89 degrees 45 minutes 35 seconds West a distance of 679.58 feet to a point on the easterly line of Outlot E of said ST. CROIX SANCTUARY; thence North 00 degrees 00 minutes 00 seconds East, along said easterly line, a distance of 120.00 feet to the northerly line of said Outlot F; thence North 89 degrees 45 minutes 35 seconds East, along said northerly line, a distance of 1255.93 feet; thence South 00 degrees 50 minutes 16 seconds East, continuing along said northerly line, a distance of 129.89 feet; thence North 89 degrees 39 minutes 30 seconds East, continuing along said northerly line, a distance of 40.00 feet; thence North 00 degrees 50 minutes 16 seconds West, continuing along said northerly line, a distance of 129.82 feet; thence North 89 degrees 45 minutes 35 seconds East, continuing along said northerly line, a distance of 122.06 feet to the northeast corner of said Outlot F; thence South 00 degrees 11 minutes 30 seconds East, along the easterly line of said Outlot F, a distance of 129.60 feet; thence North 89 degrees 39 minutes 30 seconds East, along said easterly line, a distance of 17.71 feet to the point of beginning.

IN WITNESS WHEREOF, the parties have entered into and executed this Agreement the day and year first above written.

CITY OF LAKE ELMO:

By: _____
Mike Pearson

Its: Mayor

By: _____
Julie Johnson

Its: City Clerk

PURCHASER:

**SANCTUARY OF LAKE ELMO
HOMEOWNERS ASSOCIATION**

By:  1/29/21

Its: HOA PRESIDENT