



## STAFF REPORT

DATE: July 20, 2021

### **CONSENT**

**AGENDA ITEM:** Purchase Agreement PID 13.029.21.32.0086

**SUBMITTED BY:** Kristina Handt, City Administrator

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### **BACKGROUND:**

At the June work session, Council reviewed street assessments for commercial properties in the OV 5 and 6 project. This included oddly shaped parcels along the railroad tracks. Council asked if any of the properties were interested in selling to the city. Following the meeting, Liz Niehaus reached out and expressed interest.

### **ISSUE BEFORE COUNCIL:**

Should the council approve the purchase agreement for PID 13.029.21.32.0086?

### **PROPOSAL:**

Included in your packet is the purchase agreement drafted by the city attorney and signed by Ms. Niehaus. The purchase price is \$4,620. The city also agrees to cover the closing costs. Closing shall be no later than September 30, 2021.

### **FISCAL IMPACT:**

\$4,620 plus closing costs. Funds will come from the 2021A bonds.

### **OPTIONS:**

- 1) Approve the Purchase Agreement for PID 13.029.21.32.0086
- 2) Amend and then Approve the Purchase Agreement for PID 13.029.21.32.0086
- 3) Do not approve the Purchase Agreement for PID 13.029.21.32.0086

### **RECOMMENDATION:**

If removed from the consent agenda:

***“Motion to approve the Purchase Agreement for PID 13.029.21.32.0086.”***

### **ATTACHMENTS:**

- Purchase Agreement

## PURCHASE AGREEMENT

**THIS PURCHASE AGREEMENT** (this “**Agreement**”) is made as of the this \_\_\_\_ day of \_\_\_\_\_, 2021 (the “**Effective Date**”), by and between Elizabeth M. Niehaus, formally known as Elizabeth M. Johnson (the “**Seller**”) and the City of Lake Elmo, a Minnesota municipal corporation (the “**Buyer**”)(together with the Seller collectively referred to herein as the “**Parties**” or each a “**Party**”).

### Recitals

**WHEREAS**, the Seller is the owner of that certain real property located in the City of Lake Elmo, Washington County, Minnesota, being legally described on the attached **Exhibit A** (the “**Property**”); and

**WHEREAS**, the Seller wishes to sell, and the Buyer wishes to purchase the Property under certain terms and conditions as set forth in this Agreement.

### Terms of the Agreement

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement, the Parties hereby agree as follows:

1. **Recitals.** The Recitals set forth above in the preamble to this Agreement and the Exhibit attached to this Agreement are incorporated into this Agreement as if fully set forth herein.
2. **Offer/Acceptance for Sale of Property.** The Seller hereby agrees to sell the Property to the Buyer and the Buyer hereby agrees to purchase the same, pursuant to the terms and conditions of this Agreement.
3. **Purchase Price.** The Buyer agrees to pay the Seller at closing a total of Four Thousand Six Hundred Twenty and 00/100 Dollars (\$4,620.00) (the “**Purchase Price**”).
4. **Deed/Marketable Title.** Subject to performance by the Buyer, the Seller agrees to execute and deliver on the Closing Date a warranty deed conveying title to the Property to the Buyer (the “**Deed**”), free and clear of all encumbrances, except the Permitted Exceptions, as hereinafter defined.
5. **Closing.** The closing on the purchase of the Property (“**Closing**”) shall occur within 30 business days after the expiration of the Due Diligence Period as defined here or as mutually agreed upon between the Parties but by no means later than September 30, 2021 (the “**Closing Date**”). The Buyer shall take possession of the Property on the Closing Date.
6. **Due Diligence Period.** For a period of 30 days from the Effective Date (the “**Due Diligence Period**”), the Buyer will have the absolute right to cancel this Agreement by written notice if in the Buyer’s sole and absolute discretion: (a) the Buyer is unsatisfied with the Buyer’s review of the Seller’s Property Information, as hereinafter defined, and of the results of any matters disclosed by the Buyer’s review, inspection, investigation and testing of the Property (collectively, the “**Inspections**”), including without limitation, analysis of any conditions affecting the Property,

easements and covenants, surveys, engineering inspections, soils, geotechnical, wetland, Phase I and Phase II environmental and other reports, which the Buyer in its sole and absolute discretion deems necessary and appropriate; or (b) any of the Buyer's contingencies listed in Section 11 herein have not be satisfied.

7. **Right of Entry.** During the Due Diligence Period, the Seller shall allow the Buyer, and the Buyer's agents, physical access to the Property without charge at all reasonable times and upon not less than 24 hours advance notice to the Seller for the purpose of the Buyer's Inspections.

8. **Seller's Property Information.** The Seller shall, within seven days after the Effective Date, deliver to the Buyer copies of all items in the Seller's possession or control relating to the Property, including, all surveys, title insurance commitments or policies, property tax statements, environmental reports, zoning information, licenses, permits, governmental approvals, easements, covenants, restrictions, and any other documents relating to the Property (collectively, the "**Seller's Property Information**").

9. **Seller's Cooperation.** In addition to providing the Seller's Property Information, the Seller shall cooperate with the Buyer in connection with the Buyer's Inspections during the Due Diligence Period. Such cooperation shall include providing such reasonable information and documents as requested by the Buyer. Further, the Seller shall disclose any known conditions, including, but not limited to, any environmental contamination existing on the Property.

10. **Documents.** In addition to the Deed required under Section 4 herein, the following documents shall be in approved form, executed by the Seller either before or at Closing, and delivered by the Seller at Closing:

- a. A standard form Affidavit of Seller;
- b. A "bring-down" certificate, certifying that all of the warranties made by the Seller in this Agreement remain true as of the Closing Date;
- c. A certificate that the Seller is not a foreign national;
- d. A well disclosure certificate, if required, or, if there is no well on the Property, the Deed given pursuant to Section 4 above must include the following statement: "The Seller certifies that the Seller does not know of any wells on the described real property.";
- e. A Methamphetamine Disclosure Certificate, if required;
- f. Any other documents reasonably required by the Buyer's title insurance company or attorney to evidence that title to the Property is marketable and that the Seller has complied with the terms of this Agreement.

11. **Buyer's Contingencies.** The Buyer's obligation to purchase the Property from the Seller is contingent upon the following:

- a. The Buyer's determination of marketable title pursuant to this Agreement;
- b. The Buyer's determination that the results of any environmental investigation or the results of any inspections of the Property conducted pursuant to this Agreement are satisfactory to the Buyer; and
- c. Approval of this Agreement by the Buyer's governing body.

The Buyer shall have until the expiration of the Due Diligence Period to remove these contingencies. The contingency listed as Section 11(c) may not be waived. The contingencies listed in Section 11(a)-(b) are solely for the benefit of the Buyer and may be waived by the Buyer. If the Buyer or its attorney gives written notice to the Seller that the contingencies are duly satisfied or waived with respect to Section 11(a)-(b), the Buyer and the Seller shall proceed to close the transaction as contemplated herein. If any contingency has not been satisfied or expressly waived by the Buyer on or before the end of the Due Diligence Period, then the Buyer may at its option terminate this Agreement, without liability, by written notice to the Seller at any time on or before the end of the Due Diligence Period. As a contingent Agreement, the termination of this Agreement is not required pursuant to Minnesota Statutes, Section 559.21, et. seq. Upon such termination of this Agreement pursuant to this Section, this Agreement shall become null and void and the Parties shall have no further obligations hereunder.

12. **Title Examination/Curing Title Defects.** The Buyer may, at its expense and within 14 business days after the Effective Date, obtain and provide a copy to the Seller a commitment for title insurance ("**Title Evidence**") for the Property insuring title thereto in the full amount of the Purchase Price. The Buyer will have 10 business days after receipt of the Title Evidence to examine the same and to deliver written objections to title, if any, to the Seller. Any matter shown in the Title Evidence to which the Buyer has not made an objection shall be a "**Permitted Exception**" under this Agreement. Following its receipt of the Buyer's written objections to title, the Seller shall have 20 days (the "**Cure Period**") to make commercially reasonable efforts to correct all objections, in its sole discretion, during which period the Closing will be postponed as necessary. If any objections are not cured within the Cure Period and the Seller has informed the Buyer that she will undertake no further efforts to cure the objections to title, the Buyer will have the option to do any of the following: (i) terminate this Agreement; (ii) extend the Cure Period so long as the Seller is making a good faith effort for a period mutually agreed upon by the Parties; or (iii) waive the objections and proceed to Closing in which case the Buyer shall be deemed to have accepted the Property subject to any and all uncured objections, and such accepted objections shall be deemed Permitted Exceptions.

13. **Seller Representations and Warranties.** The Seller hereby represents and warrants to the Buyer now and as of the Closing Date that:

- a. **Title.** The Seller has good and marketable fee simple title to the Property, subject only to such encumbrances which are of record or are otherwise specified herein.
- b. **Condemnation.** There is no pending or, to the actual knowledge of the Seller, threatened condemnation or similar proceeding affecting the Property or any portion thereof, and the Seller has no actual knowledge that any such action is contemplated.

- c. **Legal Authority/Capacity.** The Seller has full power and authority to enter into and perform this Agreement in accordance with its terms.
- d. **Leases.** The Seller represents that there are no third parties in possession of the Property, or any part thereof, and that there are no leases, oral or written, affecting the Property or any part thereof.
- e. **Foreign Status.** The Seller is not a "foreign person" as such term is defined in the Internal Revenue Code.
- f. **Methamphetamine Production.** To the best of the Seller's knowledge, methamphetamine production has not occurred on the Property.

All such representations and warranties shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time.

14. **Environmental Investigation.** The Seller hereby grants to the Buyer and the Buyer's agents a license to enter and evaluate the Property during the Due Diligence Period for the purpose of conducting an environmental assessment, if desired by the Buyer, subject to the Buyer providing the Seller written notice consistent with Section 7 herein. Further, the Buyer or the Buyer's agent shall have the right pursuant to said license to bring persons and equipment onto the Property, make inspections and perform tests and analyses as the Buyer may deem reasonable to determine the presence of Hazardous Substances on the Property. For the purposes of this section, "Hazardous Substances" means any product, substance or waste whose presence, use storage, manufacture, disposal, transportation or release, either by itself or in combination with other materials (i) is potentially injurious to the public health, safety or welfare, or the environment, (ii) is regulated under any Environmental Law or by any government entity, or (iii) is a basis for liability or potential liability to any governmental agency or third party under any Environmental Law. Hazardous Substances include, without limitation, hazardous wastes, solid wastes, demolition materials, petroleum or petroleum products or fractions thereof, asbestos and asbestos-containing materials, polychlorinated biphenyls, toxic molds, pesticides, and other hazardous or toxic substances, pollutants, and contaminants. The term "Environmental Law" means all applicable federal, state or local laws, statutes, common law rulings, ordinances, rules, regulations and agency guidance documents relating to pollution, protection of the environment or the generation, manufacture, disposal, treatment, release, use of or exposure to chemical or hazardous substances, as in effect on the date hereof, including without limitation the Minnesota Environmental Response and Liability Act, the federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Toxic Substances Control Act, the Clean Air Act, and Occupational Safety and Health Act, all as amended, and regulations promulgated thereunder.

The Buyer shall bear the cost of any such assessment and investigation. If the results of any environmental assessment are not to the satisfaction of the Buyer, the Buyer at its sole discretion may cancel this Agreement during the Due Diligence Period without liability. If the Buyer cancels this Agreement pursuant to this provision, the Buyer shall restore the Property to its original condition or nearly so as is reasonably practicable.

15. **Taxes.** The Seller shall pay all taxes against the Property which are due and have accrued before the Closing Date, and the Buyer shall assume all of such taxes becoming due and accruing on the Closing Date and thereafter, except that all general state, county, school and municipal taxes (exclusive of rebates, penalties and interest) becoming due and accruing during the calendar year in which Closing occurs shall be prorated between the Seller and the Buyer on the basis of said calendar year as of the Closing Date. If the amount of any such tax to be prorated cannot be then ascertained, proration shall be computed on the basis of the rate(s) for the preceding year applied to the last assessed valuation prior to the Closing Date, without any right to subsequent adjustment once the actual amounts are known. The Buyer shall be responsible for paying the pending special assessment that will be levied by the Buyer against the Property in 2021.

16. **Seller's Closing Obligations.** On the Closing Date, the Seller shall be obligated to deliver, or cause to be delivered, the following:

- a. The Deed, in accordance with Section 4 herein and in a form reasonably acceptable to the Buyer and the Title Company, properly executed and conveying marketable fee simple title to the Property, subject only to the Permitted Exceptions;
- b. Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions contemplated by this Agreement.

17. **Buyer's Closing Obligations.** On the Closing Date, the Buyer shall be obligated, at its sole cost and expense, to deliver, or cause to be delivered, the following.

- a. The Purchase Price after all adjustments and prorations are made at the Closing;
- b. Such other documents as may be reasonably necessary or appropriate to effect the consummation of the transactions contemplated by this Agreement.

18. **Closing Costs and Related Items.** The Buyer hereby agrees to and shall pay all customary closing costs incurred as part of the transaction contemplated herein at Closing including the following costs: (a) the state deed tax and any conservation fees; (b) recording fees for all instruments required to establish marketable title; (c) the closing fee charged by the Title Company utilized to close the transaction contemplated by this Agreement; (d) recording fees required to record the Deed from the Seller under this Agreement; (e) the title search, name search and assessment search fees and other fees incurred in preparation of the commitment for title insurance; and (f) the title insurance premium. Each Party shall be responsible for its own attorneys' fees and costs.

19. **Default.** If either Party defaults in its obligations to close and deliver the Deed in accordance with the provisions of this Agreement, the non-defaulting Party may, by notice upon the defaulting Party, terminate this Agreement, in which event the Parties shall have no further obligations to one another. Termination of this Agreement shall be the Parties' sole and exclusive remedy under this Agreement.

20. **Survival.** Except as otherwise herein expressly provided, all the promises, representations, warranties, and undertakings expressed in this Agreement (unless otherwise stated

herein) shall be deemed made on and as of the Closing Date, as well as on the date hereof, and shall survive consummation of this Agreement and delivery of the Deed to the Property for a period of one (1) year following the Closing Date.

21. **Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed made when delivered in person, delivery service, electronic mail, or when mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Seller: Elizabeth M. Niehaus  
PO Box 403  
Lake Elmo, MN 55042  
Emnle3@hotmail.com

with a copy to: Susannah Torseth  
Attorney At Law  
Galowitz – Olson PLLC  
Dba St. Croix Title  
10390 39<sup>th</sup> Street North  
Lake Elmo, MN 55042  
storseth@galowitzolson.com

If to the Buyer: City of Lake Elmo  
Attn: Kristina Handt, City Administrator  
3880 Laverne Ave. N, Suite 100  
Lake Elmo, MN 55042  
khandt@lakeelmo.org

with a copy to:  
Sarah Sonsalla, Esq.  
Kennedy & Graven, Chartered  
Fifth Street Towers  
150 South 5<sup>th</sup> Street, Suite 700  
Minneapolis, MN 55402  
ssonsalla@kennedy-graven.com

22. **Entire Agreement.** This Agreement represents the entire agreement and understanding between the Parties concerning the subject matter hereof and supersedes all prior agreements, whether written or oral.

23. **Severability.** If any provisions of this Agreement or the application thereof to any Party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

24. **No Broker Involved.** The Parties represent and warrant to each other that there is no broker involved in this transaction with whom either has negotiated or to whom either has agreed to pay a broker commission. The Seller agrees to indemnify the Buyer for any and all

claims for brokerage commissions or finders' fees in connection with negotiations for purchase of the Property arising out of any alleged agreement or commitment or negotiation by the Seller, and the Buyer agrees to indemnify the Seller for any and all claims for brokerage commissions or finders' fees in connection with negotiations for purchase of the Property arising out of any alleged agreement or commitment or negotiation by the Buyer.

25. **Construction of Agreement.** This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties. Both Parties have contributed or had the opportunity to contribute substantially and materially to the preparation of this Agreement.

26. **Execution in Counterparts.** This Agreement may be executed in counterparts by the Parties hereto. Facsimile, scanned PDF, or other electronic signatures shall be sufficient for all purposes.

27. **Modification and Waiver.** No purported amendment, modification, or waiver of any provision hereof shall be binding unless set forth in a written document signed by both Parties (in the case of amendments or modifications) or by the Party to be charged thereby (in the case of waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term hereof or of the same circumstance or event upon any recurrence thereof.

28. **Risk of Loss.** If there is any loss or damage to the Property between the Effective Date and the Closing Date, for any reason including, but not limited to, fire, vandalism, flood, earthquake or act of God, the risk of loss shall be on the Seller. If the Property is destroyed or substantially damaged before Closing, this Agreement may become null and void, at the Buyer's option. At the request of the Buyer, the Seller agrees to sign a cancellation of this Agreement under such circumstances.


29. **Choice of Law and Venue; Interpretation.** This Agreement shall be governed by, enforced, and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and the Parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

30. **Relocation Benefits.** The Seller acknowledges that she is being displaced from the Property as a result of the transaction contemplated by this Agreement and that she may be eligible for relocation assistance and benefits and that the Purchase Price includes compensation for any and all relocation assistance and benefits for which the Seller may be eligible and the Seller agrees to waive any and all further relocation assistance benefits existing at this time as a result of the Buyer's acquisition of the Property. The provisions of this Section shall survive closing of the transaction contemplated by this Agreement.

*{Remainder of Page Intentionally Left Blank; Signature Page to Follow}*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed as of the Effective Date.

**SELLER:**

  
Elizabeth Niehaus

**BUYER:**

**City of Lake Elmo**

By: \_\_\_\_\_  
Charles Cadenhead  
Its: Mayor

By: \_\_\_\_\_  
Julie Johnson  
Its: City Clerk

**EXHIBIT A**  
Legal Description of the Property

PT NW1/4-SW1/4 DESC AS FOLL: BEG AT POINT INTER OF NLY R/W LN CHICAGO & NORTHWESTERN RAILROAD COMPANY, FORMERLY THE CHICAGO-ST PAUL-MINNEAPOLIS OMAHA RAILROAD COMPANY SD NLY R/W LN ALSO BEING SLY LN MAIN STREET AS SHOWN ON PLAT OF ELMO PARK WITH WLY LN SD NW1/4-SW1/4 SD WLY LN HAVING ASM BRG N00DEG58'21"W THN N71DEG40'40"E ALG SD SLY LN OF PLATTED MAIN ST 235.00FT THN S18DEG19'20"E 19.07FT M/L TO INTER WITH LN DRAWN PARL & 40FT NLY AS MEAS @ RT ANG FROM C/L MAIN TRACK SD CHICAGO & NORTHWESTERN RR CO AS SAME WAS LOCATED AND OPERATED ON 01/17/ 1999 THN N71DEG43'14"E ALG SD PARL LN 150FT THN S18DEG19'20" E 10FT M/L TO INTER WITH LN DRAWN PARL WITH & 30FT NLY AS MEAS AT RT ANG FROM SD C/L OF MAIN TRACK AS LOCATED AND OPERATED ON 01/17/1999 THN S71DEG43'14"W ALG SD PARL LN 394.02FT M/L TO SD WLY LN OF NW1/4-SW1/4 THN N00DEG58'21"W 30.27FT M/L TO POB ALSO PT NW1/4-SW1/4 DESC AS FOLL:COM @ POINT INTER WITH NLY R/W LN CHICAGO & NORTHWESTERN RR CO FORMERLY CHICAGO-ST PAUL-MINNEAPOLIS OMAHA RR CO SD NLY R/W LN ALSO BEING SLY LN MAIN ST AS SHOWN ON RECORDED PLAT OF ELMO PARK WITH WLY LN SD NW1/4-SW1/4 SD WLY LN HAVING ASM BRG OF N00DEG58'21"W THN N71DEG40'40" E ALG SD NLY R/W LN & ALG SD SLY LN PLATTED MAIN ST 385FT TO PT HEREINAFTER REFERRED AS PT "A" THN CONT N71DEG40'40"E ALG LAST DESC LN 60.5FT TO PT HEREINAFTER REFERRED TO AS PT "B" THN CONT N71DEG40'40"E ALG LAST DESC LN 60.00FT THN S18 DEG19'20"E ALG LN HEREINAFTER REFERRED AS LN "A" 19.52FT TO POB PRCL BEING DESC THN SWLY PT IN LN WHICH BEARS S18DEG19'20"E FROM BEFORE DESC PT "B" AT DIST 19.58FT SELY THEREFROM AS MEASURED ALONG SD LN THN N18DEG19'20"W ALONG SD LN 19.58 FT TO PT "B" THN S71 DEG40'40"W ALONG SD SLY LN ST 60.5FT M/L TO PT "A" THN S18DEG19'20"E DIST 29.18 FT M/L TO INTER WITH LN DRAWN PARL WITH & 30FT NLY AS MEAS @ RT ANG FROM C/L MAIN TRACK SD CHICAGO & NORTHWESTERN RR CO THN N71DEG43'41"E ALG SD PARL LN 276.65FT M/L TO INTER WITH LN PARL WITH & 180FT SWLY AS MEAS AT RT ANG FROM SELY PROJECTION OF NELY LN LOT 1 BLK 2 SD PLAT ELMO PARK THN N18DEG15'56"W ALG SD PARL LN 10FT M/L TO INTER WITH LN DRAWN PARL WITH & 40FT NLY AS MEAS AT RT ANG FROM SD C/L OF MAIN TRACK THN S71DEG43'14"W ALG SD PARL LN 156.16FT M/L TO INTER WITH BEFORE DESC LN "A" THN S18DEG19'20"E ALG SD LN "A" 0.25FT M/L TO POB EXC THAT PT NW1/4-SW1/4 SD SEC 13 DESC AS FOLL:COM AT PT ON W LN SD SEC 13 44FT NWLY MEAS AT RT ANG FROM C/L OF MAIN TRACK ST PAUL-STILLWATER-TAYLORS FALLS RR AKA CHICAGO-ST PAUL-MINNEAPOLIS-OMAHA RR CO NOW THE CHICAGO & NORTHWESTERN RR CO AS SD TRACK C/L ORIGINALLY LOCATED AND ESTABLISHED ACROSS OSS SD SEC 13 THEN NELY PARL WITH SD ORIGINAL MAIN TRACK C/L SD PARL LN BEING ALSO SELY LN MAIN ST 385.0FT TO POB PRCL DESC THN CONT NELY ALG SD SELY LN MAIN ST 60.5FT THN SELY AT RT ANG TO LAST DESC COURSE TO PT 40FT NWLY MEAS AT RT ANG FR OM C/L MAIN TRACK OF CHICAGO & NORTHWESTERN RR CO THN SWLY & PARL WITH SD LAST DESC MAIN TR ACK C/L TO PT ON LN

DRAWN AT RT ANG TO SELY LN SD MAIN ST THROUGH POB THN NWLY ALG SD  
LAST DESC RT ANG LN TO POB SECTION 13 TOWNSHIP 029 RANGE 021

PID: 13.029.21.32.0086