

COUNCIL ACTION FORM

SUBJECT: SALE OF CITY-OWNED PROPERTY AT 1417 DOUGLAS AVENUE TO MAINSTREAM LIVING

BACKGROUND:

At the December 17th City Council meeting, the City Council directed staff to proceed with finalizing the terms and conditions (which will include language for a restrictive covenant) for the sale of the City-owned property located at 1417 Douglas Avenue to Mainstream Living in the amount of \$36,012.

Staff has been working closely with the City Attorney's Office and with Mainstream Living and has finalized the terms and conditions for the sale of the property. In addition to the \$36,012 purchase price, below are some other major provisions of the sale and use of the property:

1. Mainstream Living must construct a five-bedroom wheelchair accessible facility on or before December 31, 2020;
2. The City of Ames will retain ownership of the property until the specified structure is constructed;
3. For a period of twenty-one (21) years, the facility must be utilized for affordable housing for very low and low income adults with intellectual disabilities;
4. The facility cannot be sold, assigned or any interest transferred prior to December 31, 2041, without the written consent of the City.

ALTERNATIVES:

1. The City Council can adopt a resolution approving the sale of the city-owned property at located at 1417 Douglas Avenue to Mainstream Living, Inc. based on the attached terms and conditions, which includes language for a twenty-one (21) year restrictive covenant and other provisions.
2. The City Council can adopt a resolution approving the sale of the city-owned property located at 1417 Douglas Avenue to Mainstream Living, Inc. with modifications to the attached terms and conditions.
3. Reject approval of the sale of the city-owned property at located at 1417 Douglas Avenue to Mainstream Living, Inc. and sell the property to another entity.

CITY MANAGER'S RECOMMENDED ACTION:

The opportunity to purchase deteriorated housing and to stabilize a viable neighborhood is an important priority for the City's affordable housing program goals and provisions. Additionally, to sell the property to a local area non-profit to provide affordable housing for persons with disabilities is consistent with the City's 2019 Fair Housing Analysis Impediments Study. **The final sales price of \$36,012 reflects the City's direct costs in acquiring the property, demolishing the house, and recouping all additional costs associated with completing the sale of the property.**

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1, thereby approving the sale of the city-owned property at located at 1417 Douglas Avenue to Mainstream Living, Inc. based on the attached terms and conditions including language for a twenty-one (21) year restrictive covenant and other provisions.

DO NOT WRITE IN THE SPACE ABOVE THIS LINE; RESERVED FOR RECORDER

Prepared by: Mark O. Lambert, City of Ames Legal Department, 515 Clark Ave., Ames, IA 50010; 515-239-5146

Return to: Diane R. Voss, Ames City Clerk, Ames City Hall, 515 Clark Ave., Ames, IA 50010; 515-239-5146

**AGREEMENT BETWEEN THE CITY OF AMES AND
MAINSTREAM LIVING, INC., FOR PURCHASE AND
CONSTRUCTION OF PROPERTY AT 1417 DOUGLAS
AVENUE, AMES, IOWA**

THIS AGREEMENT is made and entered into between the City of Ames, Iowa, an Iowa municipal corporation (“City”), and Mainstream Living, Inc. (“Mainstream Living”), an Iowa nonprofit corporation.

WHEREAS, the City acquired the property located at 1417 Douglas Avenue due to long term abandonment and deterioration and borrowed funds from the City’s Affordable Housing Plan for the purchase, demolition and clearing of the property which had been determined to be a dangerous building; and

WHEREAS, the City Council determined that selling the property to a nonprofit organization with restrictions on the use of the property for affordable housing is a public purpose that advances the goals and objectives the of the City and its Consolidated CDBG Plan; and

WHEREAS, the price proposed by Mainstream Living of \$36,012.00 is within the range of fair market value for the real property as required by Iowa Code 364.7(3) and fully reimburses the City’s Affordable Housing Program for the funds advanced to acquire and clear the property;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**I
CITY’S OBLIGATIONS**

- A. Purchase of Property. The City owns the property legally described as **Lot 4, Block 2, Ames, Story County, Iowa** (also known as 1417 Douglas Avenue) (hereinafter “Property”) and will retain ownership of that Property until conveyed to Mainstream Living under the conditions described herein.

- B. Access to Property. The City agrees to grant Mainstream Living immediate and continuing access to the property for the purpose of constructing an affordable housing structure upon the property. Access shall also be granted to Mainstream Living's agents.
- C. Technical Assistance. Upon request, the City will provide technical assistance to Mainstream Living concerning compliance with the terms of this Agreement.
- D. Performance Monitoring. The City may inspect and monitor the performance of Mainstream Living to determine its compliance regarding the performance standards of this Agreement. Substantial nonperformance, as determined by the City, constitutes noncompliance with this Agreement. In the event this occurs, the City shall notify Mainstream Living of the noncompliance and provide a time limit to correct the noncompliance.
- E. Property Conveyance. The City shall convey title to the property by a Deed without Warranty (Quit Claim) for and in consideration of Mainstream Living's completion of new construction on the property as described in this Agreement on or before December 31, 2020, and upon the payment of sums set out in Section II.A(1), herein. The deed conveying title shall be subject to a use restriction as set forth in section II.C(2) below. The City shall provide to Mainstream Living the existing abstract of title to the property in the possession of the City, but the City shall have no responsibility to pay any abstracting expenses.

**II
MAINSTREAM LIVING'S
OBLIGATIONS**

- A. Compensation for Purchase.
 - 1. Mainstream Living agrees to pay the City of Ames the sum of \$36,012.00 for the Property. Mainstream Living agrees that it shall provide the full amount of the purchase price in the amount of \$36,012.00 (100% of the purchase price) for the Property, at the time of the approval of this Agreement, which shall be nonrefundable. This payment shall be made to the City no later than 7 days after the approval of this agreement by the City, and shall be a pre-condition to Mainstream Living being granted access to the Property. Mainstream Living shall pay all transfer and recording expenses, including transfer tax, if any, permit fees and other expenses related to the conveyance of the Property. All abstracting costs shall be the responsibility of Mainstream Living, and the City shall have no responsibility whatsoever for any abstracting expenses.
 - 2. In Kind Compensation. Mainstream Living agrees to provide all materials, labor and services as are necessary to construct the structure to the standards described in section II.B so that it is safe and habitable for residential use.

3. Property Improvements. Mainstream Living agrees to complete all construction included on **Attachment A** by this reference made a part hereof. Mainstream Living shall commence construction upon the property no later than July 1, 2020. All property improvements shall be completed on or before December 31, 2020. Mainstream Living further agrees that if it fails or decides to not to complete the improvements to the Property, the City of Ames will not reimburse Mainstream Living for any cost incurred for any improvements made to the Property.
4. Property Maintenance and Utilities. Mainstream Living shall be responsible for all maintenance for the Property (i.e., lawn care, snow removal, etc.) and shall have all utilities (electric, gas, water, and sewer), if any, transferred into its name within one calendar week from the date of this mutually signed Agreement.
5. Property Taxes. Property taxes until transfer of title to Mainstream Living will be the responsibility of the City of Ames. No property tax proration shall be required of the City at Closing.
6. As-Is Condition. Mainstream Living acknowledges that they have made a sufficient and satisfactory inspection of the Real Property and are purchasing the Real Property in its “as is” condition. If Mainstream Living elects to have a survey done on the property, the City shall have no responsibility to pay for any costs associated with the survey.

B. Performance Standards.

1. The Property shall be constructed in compliance with all applicable state and local building codes and regulations, including necessary building permits as required. The development of any architectural designs, if necessary, for the project shall be the responsibility of Mainstream Living, subject to prior approval by the City. Mainstream Living shall submit new construction plans to the Planning and Housing Department and Building Inspections Division for written approval before applying for a building permit.
2. Mainstream Living shall provide certification in a form acceptable to the City that the activities carried out under this Agreement will meet the objective of benefitting low and moderate income persons as defined in 24 CFR 570.208.

C. Completion Date and Terms.

1. Mainstream Living shall be permitted to commence construction upon payment to the City of the funds set forth in paragraph IIA(1) above to the City. Mainstream Living shall complete the construction of the Property by December 31, 2020.
2. Mainstream Living shall construct upon the Property a structure that is a five-bedroom, wheelchair accessible Group Home for the sole purpose of providing affordable housing and services for low income adults with intellectual disabilities. The structure

shall be occupied by low income adults with intellectual disabilities for a period of twenty-one years after the City transfers title to the property to Mainstream Living, and Mainstream Living shall cooperate with the City, as may be required, and execute a restrictive covenant limiting the use of the property as contemplated by this agreement.

3. Insurance. During the period of this Agreement, effective as of the start date of the project, Mainstream Living shall, at its own expense, procure and maintain all-risk property damage and liability insurance. For the term of this Agreement, Mainstream Living shall list the City as an additional insured on said property insurance. Property damage coverage shall not be less than the current market value of the Property. Liability coverage shall include contractual insurance as well as comprehensive form insurance, and shall provide coverages of not less than \$1,000,000 bodily injury per person, \$1,000,000 bodily injury per occurrence and \$500,000 property damage. Mainstream Living shall furnish the City with a certificate of insurance. The insurance company providing the insurance must be licensed to do business in the state of Iowa and rated as A or better by A.M. Best. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City. The contractor shall also give at least thirty (30) days prior notice to the City, by certified mail, return receipt requested, of any coverage to be suspended, voided, canceled by either party or reduced in coverage or in limits. Mainstream Living shall provide Workers' Compensation insurance coverage, as required by Chapter 85 of the Code of Iowa, for all employees involved in the performance of this Agreement. Mainstream Living shall furnish the City with certificates of insurance for all insurance required under this Agreement, upon request of the Housing Coordinator.

D. Audits, Records, and Notices.

1. Prior to the approval of this Agreement by the City, Mainstream Living shall promptly furnish to the City for its review and approval a current audit of its annual financial statements.
2. Mainstream Living shall direct all notices, reports, insurance policies and other communications related to or required by this Agreement to the office of the City of Ames Department of Planning and Housing, Housing Coordinator, 515 Clark Avenue, Room 214, Ames, Iowa, 50010. Notice by both Mainstream Living and the City shall be given by ordinary mail.

**III
NON-PERFORMANCE**

- A. Performance Obligation. Until December 31, 2041, Mainstream Living shall, in a manner satisfactory to the City, fulfill its stated purpose as outlined in section II of this Agreement.
- B. Limitation on Assignment.

1. Mainstream Living shall not sell, assign or transfer any legal or equitable interest in the Property at any time prior to December 31, 2041, without written consent of the City.
- C. Default. In the event Mainstream Living defaults in the performance or observation of any covenant, agreement or obligation set forth in this Agreement, and if such default remains uncured for a period of thirty (30) calendar days after notice thereof shall have been given by the City to Mainstream Living (or for a period of sixty (60) calendar days after such notice if such default is curable but requires acts to be done or conditions to be remedied which, by their nature, cannot be done or remedied within such 30-day period and thereafter diligently and continuously prosecutes the same to completion within such 60-day period), the City may declare that Mainstream Living is in default hereunder and may take any one or more of the following steps, at its option:
1. By mandamus or other suit, action or proceeding at law or in equity, require Mainstream Living to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or a violation of the rights of the City hereunder, or obtain damages caused by Mainstream Living by any such default.
 2. Have access to and inspect, examine and make copies of all books and records of Mainstream Living which pertain to the project.
 3. Take whatever other action at law or in equity which may appear necessary or desirable to enforce the obligations, covenants and restrictions of Mainstream Living hereunder, including a cancellation of this contract. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the City to enforce the same or obtain relief against or recover for the continuation or repetition of such breach or violation, or any similar breach or violation thereof, at any later time or times.
- D. Events of Default. The following, by way of specification but not limitation, shall constitute events of default of this Agreement between Mainstream Living and the City:
1. The failure of Mainstream Living to comply with any of its obligations required by this Agreement, including a failure to construct and complete the structure required by this Agreement on or before December 31, 2020.
 2. Mainstream Living causes or permits the Property to be damaged, in disrepair, the site of a public nuisance or otherwise the site of conditions that unreasonably interfere with the use and enjoyment of other properties in the vicinity, ordinary wear and tear excepted.
 3. Mainstream Living causes unauthorized persons to reside in the property without written approval of the City of Ames. Unauthorized persons are persons who are not low income adults who have intellectual disabilities or employees of Mainstream Living who are providing service at the structure.

**IV
TERMINATION OF AGREEMENT FOR CAUSE**

If Mainstream Living fails to fulfill its obligations under this Agreement in a timely and proper manner, or if Mainstream Living violates any of the terms, agreements or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to Mainstream Living as provided in Iowa Code ch. 656. Mainstream Living shall have no right of reclamation or compensation for money paid or improvements made, if any, which shall be retained by the City as compensation for use of the Real Property, as liquidated damages, or both. Upon completion of forfeiture, the City may treat any person in possession as tenants holding over after the expiration of a lease and may remove them as provided by Iowa Code ch. 648 or any other legal or equitable remedy.

**V
TERMINATION OF AGREEMENT FOR CONVENIENCE**

This Agreement may be terminated in whole or in part upon the mutual agreement of the parties hereto, in which case the City and Mainstream Living shall agree in writing upon the termination conditions, including the effective date, the disposition of contract amounts and, in the case of partial termination, the portion to be terminated.

**VI
CONFLICT OF INTEREST**

Mainstream Living covenants that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services to be undertaken through this Agreement.

**VII
ASSIGNABILITY**

Mainstream Living shall not assign or transfer any interest in this Agreement without the prior written approval of the City. Any assignment made without such consent shall be void. This Agreement shall be binding upon the parties and shall inure to the benefit of the successors and assigns of the parties hereto.

**VII
HOLD HARMLESS PROVISION**

Mainstream Living shall indemnify, defend and hold harmless the City, its officers, employees and agents from all liability, loss, cost, damage and expense (including reasonable attorney's fees and court costs) resulting from or incurred by reason of any actions based upon the negligent acts or omissions of Mainstream Living's employees or agents during the performance of this Agreement.

The City shall indemnify, defend and hold harmless Mainstream Living, its officers, employees and agents from all liability, loss, cost, damage and expense (including reasonable attorney's fees and court costs) resulting from or incurred by reason of any actions based upon the negligent acts or omissions of the City's employees or agents during the performance of this Agreement.

**IX
SEVERABILITY CLAUSE**

If any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable, this Agreement shall be deemed severable and the remainder of the Agreement shall remain in full force and effect.

**X
LIMITATIONS OF CITY LIABILITY – DISCLAIMER OF RELATIONSHIP**

The City shall not be liable to Mainstream Living, or to any party, for completion of or failure to complete any improvements, which are parts of the project. Nothing contained in this Agreement, nor any act or omission of the City or Mainstream Living, shall be construed to create any special duty, relationship, third-party beneficiary, respondent superior, limited or general partnership, joint venture or any association by reason of Mainstream Living's involvement with the City.

IN WITNESS OF THIS AGREEMENT the parties have executed this instrument under date of _____, 2020.

BUYER: MAINSTREAM LIVING, INC.

By: _____
KATHY SCHNABLE, Board Chair

By: _____
STUART AMBROSE, Treasurer

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on _____, 2020, by Kathy Schnable and Stuart Ambrose, as Board Chair and Treasurer, respectively, of Mainstream Living, Inc.

NOTARY PUBLIC

SELLER: CITY OF AMES, IOWA

By: _____
John A. Haila, Mayor

Attest: _____
Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on _____, 2020, by John A. Haila and Diane R. Voss, as Mayor and City Clerk, respectively, of the City of Ames, Iowa, as authorized by Resolution No. _____, adopted on January _____, 2020.

NOTARY PUBLIC





