



# MEMO

## Legal Department

**To:** Mayor Haila and Ames City Council

**From:** Mark O. Lambert, City Attorney

**Date:** March 5, 2021

**Subject:** Purchase of 2802 Arbor Street

At the February 9, 2021 Ames City Council meeting, the Council directed that the purchase of a property at 2802 Arbor Street be placed on a future Council agenda.

The property at 2802 Arbor Street is owned by Julia and Marcy Webb. The Webbs and the City have been in discussions for some time about issues with their service line at the house which apparently fails to connect to the City's sanitary sewer system.

As the property will likely need to be demolished and some sort of environmental mitigation likely will need to take place, the City is purchasing the property to address the situation. The Webbs no longer reside at the property. The purchase agreement is attached.

The City and the Webbs have agreed that the City will purchase the property for the amount remaining on the Webbs' mortgage at the time of closing, and that the City will assume closing costs, up to a total amount of \$100,000. The amount remaining on the mortgage is approximately \$95,000. As the City's plan is to demolish the structure, the City has agreed to the Webbs' request that they be allowed to remove the furnace and central air conditioning unit for use at their new house and this is noted in the purchase agreement. Also, staff has agreed informally that the Webbs may remove and retain approximately 20 smaller items (such as light fixtures, towel racks, etc.) most of which the Webbs had installed in the Arbor Street house.

**ALTERNATIVES:**

1. Approve the Purchase Agreement, purchasing 2802 Arbor Street for the amount remaining on the mortgage, with the City assuming closing costs, for a total amount not to exceed \$100,000.
2. Do not approve the Purchase Agreement for 2802 Arbor Street.

## PURCHASE AGREEMENT

THIS IS AN AGREEMENT made by and between Sellers and Buyers upon the following terms and conditions:

1. **DEFINITIONS.** As used in this Agreement, unless otherwise required by the context:

(a) "**Sellers**" means Marcy R. Webb and Julia Webb (f/k/a Julia McGinley), whose mailing address is 2803 Northwood Drive, Ames IA 50010.

(b) "**Buyers**" means the City of Ames, Iowa, whose mailing address is 515 Clark Avenue, Ames, IA 50010.

(c) "**Agreement**" means this instrument as signed by Sellers and Buyers.

(d) "**Real Property**" means the real property (together with all easements and servient estates appurtenant thereto) located at 2802 Arbor Street in the City of Ames, Story County, Iowa, and legally described as follows: [See attached Exhibit 'A' for legal description].

(e) "**Date Of Possession**" means the date on which Buyers are to receive possession of the Real Property from Sellers and are thereafter entitled to the beneficial use of the Real Property.

(f) "**Closing**" means a meeting of Sellers and Buyers at which the transaction contemplated by this Agreement is finally concluded by delivery of a deed conveying title in the Real Property to Buyers and payment of the purchase price to Sellers.

2. **SALE OF REAL PROPERTY.** Sellers agree to sell and Buyers agree to buy the Real Property.

3. **THE TOTAL PURCHASE PRICE** for the real property is the payoff amount due on Seller's mortgage to Wells Fargo Home Mortgage (Loan number 0405120445) as of the date of Closing. The payoff amount as of February 26, 2021, is \$95,168.76, and Sellers shall take no action to increase said payoff amount (including, but not limited to, obtaining further extensions of credit, failing to make timely mortgage payments as may be due and owing and/or incurring any additional fees and charges). Any increases to the payoff amount which are attributable to Sellers, other than the per diem interest per day (\$11.01) to the date of Closing, shall be the sole responsibility of Sellers at Closing. The City of Ames shall have no obligation to proceed to Closing, and this Agreement shall be null and void, if the amount required to payoff the mortgage described herein is in excess of \$100,000, for any reason.

4. **PAYMENT AT CLOSING.** At the Closing of this Agreement, Buyers agree to pay to payoff Seller's mortgage in full as described above, which shall satisfy all amounts due Sellers under this Agreement. Sellers shall timely provide to Buyers or Buyers' agents pay-off statements for the mortgage encumbering the Real Property. Buyers or Buyers' agents may, at their discretion, withhold from the Purchase Price the sums due such creditors together with such interest and fees as determined by Buyers or Buyers' agents necessary for the release of the liens and remit such sums directly to such creditors on behalf of Sellers. Notwithstanding anything to the contrary, Sellers shall receive no payment from Buyers directly under the terms of this Agreement.

5. **TIME AND PLACE OF CLOSING.** The Closing of this Agreement shall take place at 10:00 A.M. on **March 30, 2021**, at the office of the City Clerk, 515 Clark Avenue, Ames Iowa, or such other time and place as the parties may mutually agree upon.

6. **CLOSING PROCEDURE.** At the Closing, Sellers shall furnish, as applicable and required, the deed, mechanic's lien affidavit, assignment of leases, valuation declaration, groundwater hazard statement, completed IRS forms W-9 for each Seller and any required title corrective instruments. The deed transfer tax shall be paid for by Buyers. The cost of preparing and recording corrective instruments required to cure title deficiencies shall be paid by Sellers. Sellers have previously provided Buyers with a copy of a groundwater hazard statement signed by Sellers and will provide the original prior to Closing and shall not, in any way, alter the groundwater hazard statement previously provided.

7. **RELEASE REQUIRED.** At the time of Closing, the Sellers shall furnish a full and final release, in a format acceptable to the Buyers, of all claims against the City of Ames related to the property located at 2802 Arbor Street, Ames, Iowa.

8. **DATE OF POSSESSION.** The Date of Possession, on which Buyers shall be entitled to take possession of the Real Property, shall be the Closing date.

9. **TENANTS.** Sellers certify and warrant to Buyer that there no tenants occupying the Real Property and that no part of the Real Property is subject to the leasehold rights of tenants. Sellers shall not grant any leasehold rights in the property to any tenant prior to Closing.

10. **SELLER'S REPRESENTATION AS TO LIENS & CONTINGENCY.** Sellers represent to Buyers that there are two liens upon the property, namely, the mortgage lien described in paragraph 3 above and a lien for existing property taxes due March 2021. Sellers will ensure that no further liens attach to the property prior to Closing, and Sellers shall bear full responsibility for any additional liens upon the property. This Agreement shall be contingent upon the existence of no additional liens against the property at the time of Closing, or the Agreement shall be null and void and Buyers shall have no obligation to proceed to closing.

11. **REAL PROPERTY TAXES.** Sellers agree to pay the real property taxes previously levied upon the Real Property. The property taxes due March 2021 in the amount of \$1,335.00 shall be paid prior to Closing by Sellers. Sellers shall provide to Buyers prior to Closing a paid receipt verifying that the March 2021 property taxes have been paid in full. Buyers shall have no obligation to close this transaction unless and until Sellers timely ensure payment of the taxes due March 2021.

12. **ASSESSMENTS FOR PUBLIC IMPROVEMENTS.** Sellers agree to pay all special assessments levied or to be levied against the Real Property for public improvements which have been installed at the date of this Agreement.

13. **RISK OF CASUALTY LOSS ON SELLERS.** Sellers agree to keep in force at their expense until the Date of Possession existing insurance policies insuring against loss by fire, tornado and other casualties customarily covered by extended coverage all improvements now or hereafter constituting a part of the Real Property. Sellers assume all risk of loss to the Real Property

due to fire, storm or other casualty. If any of the Real Property is substantially damaged or destroyed by fire, storm or other casualty before the Date of Possession, Sellers shall promptly notify Buyers thereof and furnish to Buyers a written statement of the amount of any insurance payable on account thereof. For purposes of this Agreement, the Real Property shall be deemed to be substantially damaged if the cost of replacement or repair of all damage before the Date of Possession will exceed \$1,000. Within ten days after receipt of notice of any such damage or destruction and the written statement of insurance payable on account thereof, Buyers may elect to terminate this Agreement by written notice of termination to Sellers. Upon such termination, any part of the purchase price previously paid shall be promptly refunded to Buyers, and thereafter neither Buyers nor Sellers shall have any further obligation under this Agreement. If Buyers fail to make such election to terminate, Sellers shall apply all insurance proceeds payable by reason of such damage or destruction to the payment of the purchase price and any excess proceeds shall be payable to Buyers. If the Real Property is not substantially damaged, it shall be repaired or replaced at Sellers' expense before the Date of Possession. All insurance proceeds payable by reason of damage which Sellers are obligated to repair or replace shall be paid to Sellers.

14. **ABSTRACT.** Sellers agree to deliver to Buyers for their examination abstract of title to the Real Property continued to the date of this Agreement showing merchantable title in conformity with this Agreement, the land title law of the State of Iowa and Iowa Title Standards of the Iowa State Bar Association. Buyers shall have until March 23, 2021, to give written notice to Sellers of any deficiencies in the Sellers' title to the Real Property that renders it unmarketable. The abstract of title shall become the property of Buyers when the purchase price has been paid in full. Sellers agree to pay for any additional abstracting which may be required by acts, omissions or change in the legal status of Sellers occurring before delivery of deed. If title deficiencies render title unmarketable, Sellers shall have until March 26, 2021, to remove such deficiencies to the satisfaction of Buyers, failing which Buyers shall have the option of either accepting the title as it then is or canceling this Agreement without consequence to Buyers. Seller shall, if title is found unmarketable, use diligent efforts to correct the title deficiencies within the time provided therefor. If Sellers are unable to provide Buyers with marketable title on or before the date of Closing for any reason, this Agreement shall be null and void.

15. **DEED.** Upon payment of all sums owing by Buyers to Sellers by virtue of this Agreement, Sellers agree to contemporaneously execute and deliver to Buyers a deed conveying the Real Property to Buyers. The deed shall contain general warranties of title, provided, however, that the warranties shall be limited, with respect to the period after equitable title passes to Buyers under this Agreement, to the lawful claims of persons claiming by, through or under Sellers. The deed shall be subject to: (a) Liens and encumbrances suffered or permitted by Buyers and taxes and assessments payable by Buyers. (b) Applicable zoning, subdivision, health and rental housing regulations; restrictive covenants of record; and existing easements, streets and other public right-of-way that may cross the Real Property.

16. **CONDITION & CONFORMANCE.** Sellers represent and warrant with respect to the Real Property that Sellers have not received any notice from any governmental authority as to condemnation proceedings or violation of any law, ordinance, or regulation and that the conveyance of the Real Property will not violate any applicable statute, ordinance, governmental restriction or regulation, or any private restriction or agreement binding or otherwise applicable to Sellers or the Real Property. If the property is subject to easements or restrictive covenants, Sellers warrant that

Sellers have not received any notice from any person or authority as to a breach of the covenants. Any such notices received by Sellers shall be provided to Buyers immediately.

17. **STATUS QUO.** Sellers shall maintain the Real Property in the condition substantially the same as it exists on the date of this Agreement until the Date of Possession, except as provided by this Agreement and except for ordinary wear and tear. Sellers agree to have all utility systems and mechanical and electrical appliances in good working order on the Date of Possession; and Buyers shall have the right to inspect same immediately prior to the Date of Possession at a time and place convenient to Buyers. Personal property (including waste) not included as a part of the sale of Real Property must be removed by and at the expense of Sellers before the Date of Possession. Any personal property not removed before the Date of Possession shall become the property of the Buyers and Sellers shall have no right to said personal property.

18. **FIXTURES.** All personal property that integrally belongs to or is part of the Real Property, whether attached or detached, such as floor coverings, window and door treatments, light fixtures, electrical service cables, plumbing fixtures, water heater, water softener, sump pump, door chimes, built-in appliances and furniture, fencing, trees and plants, radio and television antennae and automatic garage door opener, shall be considered a part of the Real Property and included in this sale. Sellers shall be allowed to remove the heating and cooling equipment (central air conditioner and furnace unit) from the property prior to Closing.

19. **TIMELY PERFORMANCE.** Time is of the essence in this agreement. The failure to promptly assert rights of Sellers herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default.

20. **FORFEITURE.** If Buyers fail to pay any part of the purchase price as same becomes due, or fail to pay taxes and special assessments before they become delinquent, or otherwise fail to perform any of the agreements provided for in this Agreement, then Sellers may, at their option, in addition to any and all other legal and equitable remedies which they may have, proceed to forfeit and cancel this Agreement as provided by Chapter 656 of the Iowa Code. Upon completion of such forfeiture, Buyers shall have no right of reclamation or compensation for money paid or improvements made; but such payments and/or improvements if any shall be retained and kept by Sellers as compensation for the use of the Real Property, and/or as liquidated damages for breach of this Agreement. Upon completion of such forfeiture, if Buyers or any other person or persons are in possession of the Real Property or any part thereof, such party or parties in possession shall at once peacefully remove therefrom, or failing to do so may be treated as tenants holding over unlawfully after the expiration of a lease and may accordingly be ousted and removed as such as provided by law.

21. **FORECLOSURE AFTER NOTICE.** If Buyers fail to pay any part of the purchase price as same becomes due, or fail to pay taxes and special assessments before they become delinquent, or otherwise fail to perform any of the agreements provided for in this Agreement, then Sellers may upon 20-days' written notice to Buyers of Sellers' intention to accelerate the payment of the entire balance owing under this Agreement, during which 20 days such default or defaults are not removed, declare the entire balance owing under this Agreement immediately due and payable; and thereafter at the option of Sellers this Agreement may then be foreclosed in equity and a receiver may be appointed to take charge of the Real Property and collect the rents and profits thereof to be applied as may be directed by the court. It is agreed that periods of redemption after

sale on foreclosure may be reduced under the conditions set forth in Sections 628.26 and 628.27, Code of Iowa.

22. **JOINT TENANCY OF SELLERS.** If, and only if, the Sellers, immediately preceding this sale, hold the title to the Real Property in joint tenancy, this sale shall not constitute a destruction of that joint tenancy. In that case, all rights of the Sellers in this Agreement, in the proceeds thereof, and in any continuing or recaptured rights of Sellers in the Real Property, shall be and continue in Sellers as joint tenants with full rights of survivorship and not as tenants in common. Buyers, in the event of the death of one of such joint tenants, agree to pay any balance then owing under this Agreement to the surviving Seller and to accept deed executed solely by such survivor.

23. **NOTICES.** Unless otherwise required by law, any notice or demand required or permitted by the terms of this Agreement shall be sufficient and deemed complete when expressed in writing and either (a) personally delivered to the person entitled thereto, or (b) deposited at any office of the United States Postal Service in the form of certified mail addressed to the last known mailing address of the person entitled thereto, or (c) served on the person entitled thereto in the manner of an original notice under the Iowa Rules of Civil Procedure.

24. **CITY COUNCIL APPROVAL.** This Agreement is subject to the approval of the Ames City Council. If such approval should be denied, this Agreement shall thereupon become null and void.

25. **BROKER'S COMMISSION.** Sellers and Buyers represent, respectively, that they have not engaged or used the services of a broker at any time for purposes of consummating the transaction represented by this Agreement and that no broker is entitled to any compensation as a result of the consummation of the transaction represented by this Agreement.

26. **ENTIRE AGREEMENT.** This instrument constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior agreements, statements, representations and promises, oral or written. No addition to or change in the terms of this Agreement shall be binding upon the parties unless it is expressed in a writing signed by the parties.

Offered to sell to the City of Ames at the above-stated terms this \_\_\_\_\_ day of March 2021.

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MARCY R. WEBB

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JULIA WEBB (F/K/A JULIA MCGINLEY)

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Passed and approved on \_\_\_\_\_, 2021, by Resolution No. 21-  
\_\_\_\_\_ adopted by the City Council of the City of Ames, Iowa.

**CITY OF AMES, IOWA**

By: \_\_\_\_\_  
**John A. Haila, Mayor**

At-  
test: \_\_\_\_\_  
**Diane R. Voss, City Clerk**

**STATE OF IOWA, COUNTY OF STORY, SS.:** This instrument was acknowledged before me on \_\_\_\_\_, 2021, by John A. Haila and Diane R. Voss, as Mayor and City Clerk, respectively, of the City of Ames, Iowa.

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**NOTARY PUBLIC**



## LEGAL DESCRIPTION – EXHIBIT 'A'

Commencing at a point 33 feet South of the NE Corner of the West Half ( $W\frac{1}{2}$ ) of the Southeast Quarter ( $SE\frac{1}{4}$ ) of the Northwest Quarter ( $NW\frac{1}{4}$ ) of the Northwest Quarter ( $NW\frac{1}{4}$ ) of Section Nine (9), Township Eighty-three (83) North, Range Twenty-four (24) West of the 5<sup>th</sup> P.M., Iowa; thence South 150 feet, thence West 60 feet, thence North 150 feet, thence East 60 feet to the place of beginning, also known and described as Lot One (1) of Little Brothers Subdivision of the South 150 feet of the North 183 feet of the  $W\frac{1}{2}$  of the  $SE\frac{1}{4}$  of the  $NW\frac{1}{4}$  of the  $NW\frac{1}{4}$  of Sec. 9-T83N-R24W of the 5<sup>th</sup> P.M., Ames, Story County, Iowa