

**COUNCIL ACTION FORM**

**SUBJECT: PURCHASE OF 1417 DOUGLAS AVENUE IN CONJUNCTION WITH THE CITY'S ACQUISITION/REUSE AFFORDABLE HOUSING PROGRAM**

**BACKGROUND:**

As part of the City's Dangerous Building Code, subsections of Chapter 5 (5.401) of the Ames Municipal Code, the property at 1417 Douglas Avenue, owned by Phyllis Range was declared a dangerous structure on May 7, 2019. This decision was upheld by the Board of Appeals at their June 3, 2019 board meeting and was authorized to be demolished.

Since that time the Building Official has been working closely with the property owner to determine when the property would be demolished. The owner stated that she did not have the financial means to have the property demolished, especially considering that the property may contain asbestos that would need to be removed before the property could be demolished. The Housing Coordinator was then consulted to determine if CDBG or Affordable Housing funds could be utilized for this particular situation. **After determining that the property is located in a Residential Low Density Zone (RL), and is in a very deteriorated and unslightly condition, it was determined that the property could meet the criteria for purchase under the goal of the Acquisition/Reuse Affordable Housing Program.** Council members will remember that the purpose of this program is to acquire for sale and/or vacant/abandon single-family properties to make available for low-income homebuyers and/or sale to an eligible non-profit organization for them make available to a low-income individuals and/or households. The staff met with the property owner to discuss the financial obligations and options and that were available for their consideration. The owner later contacted staff to indicate that she decided that she would like to sell the property to the City of Ames.

**It was agreed that the owner would sell the property to the City of Ames in the amount of \$11,532.00, however, after deductions to be paid on behalf of the property owner for back property taxes, abstracting, title search, etc, the net amount received by the property owner will be approximately \$8,000 +/-.** The purchase agreement signed by the property owner also stipulated that this agreement is contingent upon City Council approval (see attached Purchase Agreement).

If approved by City Council, the next step would be to close the sale and proceed with determining the cost for asbestos removal and demolition of the structure. Staff anticipates those costs could run approximately \$30,000 to \$45,000. Due to the urgency of the situation, it was determined to use funding from the Citywide Affordable Housing Fund. It was also determined that once the structure was removed and sold, the proceeds of the sale would be returned to the Citywide Affordable Housing Fund to recoup the cost of the acquisition, demolition, and asbestos remediation.

## **ALTERNATIVES:**

1. The City Council can approve the borrowing from the Citywide Affordable Housing Fund of approximately \$11,532 for the purchase of the property and approximately \$45,000 for asbestos removal and demolition of the structure at 1417 Douglas Avenue and approve the re-selling of the lot with the proceeds used to reimburse this fund.
2. The City Council can reject the use of the Citywide Affordable Housing Fund to purchase the property.

Under this alternative, City would proceed with the demolition of the structure and place a lien of the property for the expenses incurred. It is uncertain whether the City would ever be reimbursed for the expenses should the property go to a “tax sale.”

3. The City Council can refer the item back to staff for more information.

## **MANAGER'S RECOMMENDED ACTION:**

The purchase of this property is consistent with the goals and priorities adopted in our 2014-18 Consolidated Plan, under the Acquisition/Reuse Program. The purpose of this activity is to acquire for sale and/or vacant/abandon single-family properties to make available for low-income first-time homebuyers and/or sale to an eligible non-profit. But, most importantly in this case, this removes a dangerous building from one of our viable core neighborhoods.

Given the two alternatives, the opportunity to be reimbursed for the City expenses seems more prudent than relying on a future tax sale which might not yield adequate or timely reimbursement. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1, thereby approving the borrowing from the Citywide Affordable Housing Fund of approximately \$11,532 for the purchase of the property and approximately \$45,000 for asbestos removal and demolition of the structure at 1417 Douglas Avenue and approve the re-selling of the lot with the proceeds used to reimburse this fund.

The use of the Citywide Affordable Housing Fund in this case should not be viewed as precedent setting. Once our 2019/20 CDBG Action Plan is approved by HUD, \$400,000 will be available to acquire similar properties in the future. The approval by HUD could take a number of months before the City is authorized to utilize the CDBG funds.

## Real Property Purchase & Sale Agreement

THIS IS AN AGREEMENT made by and between Seller and Buyer upon the following terms and conditions:

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

1.1 "Effective Date" means August \_\_\_\_\_, 2019, which is the date this Agreement became effective by its execution by both of the parties hereto.

1.2 "Seller" means **Phyllis Range**, whose address for the purpose of this Agreement is: \_\_\_\_\_

1.3 "Buyer" means the **City of Ames, Iowa**, an Iowa municipal corporation, whose mailing address for the purpose of this Agreement is: 515 Clark Avenue, Ames IA 50010.

1.4 "Purchase Price" means <sup>U.S.</sup> **\$11,532.00**.

1.5 "Real Property" means the real property, together with all easements and servient estates appurtenant thereto, located at 1417 Douglas Avenue in the City of Ames, Story County, Iowa (Parcel No. 05-35-379-040) and legally described as follows:

Lot 4, Block 2, Harriman's Addition to Ames, Story County, Iowa.

The foregoing legal description, if abbreviated or inaccurate, shall be amended as necessary to conform to the correct and proper legal description as shown by abstracting or surveying as provided in this Agreement.

1.6 "Closing Date" is no later than 30 day of the approval of this Agreement by the City Council for the City of Ames, Iowa.

1.7 "Date of Possession" shall be the Closing Date, the date on which Buyer are to receive possession of the Real Property from Seller and are thereafter entitled to the beneficial use of the Real Property.

1.8 "Closing" means a meeting of Seller and Buyer, or their agents, at which the transaction contemplated by this Agreement is finally concluded by delivery of a deed conveying title in the Real Property to Buyer and payment of the purchase price to Seller.

1.9 "Agreement" means this instrument as signed by Seller and Buyer.

2 **Sale & Purchase.** Buyer agrees to buy and Seller agrees to sell the Real Property upon the terms and conditions set out in this Agreement.

3 **Purchase Price.** Buyer agrees to pay the total Purchase Price for the Real Property to Seller as follows:

3.1 **Payment at Closing.** At the Closing of this Agreement, Buyer agrees to pay to Seller the the Purchase Price in the amount of \$11,532.00 as may be adjusted by other provisions of this Agreement. Payment shall be in the form of a check payable to the Seller issued by a commercial bank doing business in the state in which the Real Property is located and insured by the Federal Deposit Insurance Corporation.

4 **Closing.** The Closing of this Agreement shall take place on the Closing Date above stated at the offices of the City Clerk of Ames, Iowa, or such other time and place as the parties may mutually agree. At Closing, Seller shall furnish, *if applicable and as required*: the deed; a bill of sale for included personal property; a Title Guaranty or title insurance affidavit; a mechanic's lien affidavit; an assignment of leases; tenant and mortgagee estoppel letters; the Iowa Department of Revenue's required Declaration of Value Statement; the Iowa Department of Natural Resources' required Groundwater Hazard Statement; a certificate duly executed by Seller under penalty of perjury certifying that each Seller is not a "foreign person" as may be required under

- 26 U.S.C. sec. 1445, as amended, and any regulations thereunder; and any corrective title instruments. The Iowa Real Estate Transfer Tax pursuant to chapter 428A of the Code of Iowa, the cost of preparing instruments necessary to convey title, and costs of recording instruments required to cure title deficiencies and to document authority of or reliance on Seller's authority to convey shall be paid for by Seller. Seller transfer tax, real property taxes, and similar charges to the Seller customarily paid by a seller shall be offset against the purchase price at Closing. Seller shall timely provide to Buyer or Buyer's agents the pay-off statements for all mortgages or other liens encumbering the Real Property. Buyer or Buyer's agents may, at their discretion, withhold from the Purchase Price the sums due such creditors together with such interest and fees as determined by Buyer or Buyer's agents necessary for the release of the liens and remit such sums directly to such creditors on behalf of Seller. Seller's groundwater hazard statement will state that there are on the Real Property no (1) wells, (2) solid waste, (3) hazardous waste, (4) underground storage tanks, (5) private burial sites, or (6) private wastewater systems.
- 5 **Lien Contingency.** If the total amount required to payoff and release any liens attaching to the property, including mortgages, exceeds the Purchase Price, this Agreement shall be null and void, and Buyer shall have no obligation to proceed to closing. Any and all sums provided by Buyer to Seller, if any, shall be returned to Buyer forthwith.
- 6 **City Council Approval.** This Agreement shall be subject to the approval of the City Council of Ames, Iowa. If such approval should be denied, this Agreement shall thereupon become null and void and all sums paid hereunder to Seller, if any, shall be returned to Buyer forthwith.
- 7 **Date of for Accruals.** If Seller and Buyer hereafter select an alternate Date of Possession, such alternate date shall become the effective date for the accrual of interest earned under this Agreement and the proration of real estate taxes, utility charges, and rentals.
- 8 **Tenants.** Seller certifies and represents that there are no tenants occupying the Real Property and that this Agreement is not subject to the leasehold rights of tenants presently.
- 9 **Real Property Taxes.** Real property taxes are levied annually upon the Real Property by public authorities for each fiscal year ended June 30 (the "levy year") and are payable during the subsequent fiscal year (the "collection year") without penalty, if paid in two equal installments on or by September 30 and March 31 of the collection year. Seller agrees to pay all of the real property taxes previously levied upon the Real Property (the amount due if paid in full during August 2019 is \$2,432, which shall be offset against the Buyer's proceeds as set forth in Paragraph 4 above). Real property taxes are currently unpaid and delinquent for fiscal year 2017 (installments due and delinquent for September 2018 and March 2019); and Seller shall be responsible for payment of any and all delinquent property taxes. Buyer shall be responsible for real property taxes for fiscal year 2018 (due September 2019 and March 2020).
- 10 **Property Status – "As Is."** Buyer 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.
- 11 **Risk of Casualty Loss on Seller.** Seller agrees 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. Seller assumes all risk of loss to the Real Property due to fire, storm or other casualty occurring before the date of possession. If any of the Real Property is substantially damaged or destroyed by fire, storm or other casualty before the Date of Possession, Seller shall promptly notify Buyer thereof and furnish to Buyer 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, Buyer may elect to terminate this Agreement by written notice of termination to Seller. Up-

on such termination, any part of the purchase price previously paid shall be promptly refunded to Buyer, and thereafter neither Buyer nor Seller shall have any further obligation under this Agreement. If Buyer fail to make such election to terminate, Seller 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 Buyer. If the Real Property is not substantially damaged, it shall be repaired or replaced at Seller's expense before the Date of Possession. All insurance proceeds payable by reason of damage which Seller are obligated to repair or replace shall be paid to Seller.

- 12 **Abstract.** Seller agrees to deliver forthwith to Buyer for Buyer's examination an abstract of title to the Real Property continued at Seller's expense to the date of this Agreement showing merchantable title in conformity with this Agreement, Iowa State Bar Association's *Iowa Land Title Standards*, and Iowa land title law. After Buyer's examination, the abstract shall be held by Seller. With delivery of the deed, Seller shall deliver the abstract to Buyer. Seller agrees to pay for any additional abstracting which may be required by acts, omissions or change in the legal status of Seller occurring before delivery of deed.
- 13 **Deed.** Upon payment of all sums owing by Buyer to Seller provided by this Agreement, Seller agrees to execute and contemporaneously to deliver to Buyer a deed conveying the Real Property to Buyer in fee simple absolute. 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 Buyer under this Agreement, to the lawful claims of persons claiming by, through or under Seller. The deed shall be subject to: (a) Liens and encumbrances suffered or permitted by Buyer and taxes and assessments payable by Buyer. (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.
- 14 **Fixtures.** All personal property that integrally belongs to or is part of the Real Property, whether attached or detached, shall be considered a part of the Real Property and included in this sale.
- 15 **Personal Property.** Prior to closing, the Seller shall remove any personal property from the Real Property at Seller's expense. Any personal property not removed by the time of Closing shall become the property of the Buyer and Seller shall lose all right, title and interest to any personal property remaining upon the property as of the time of Closing.
- 16 **Timeliness.** Timely performance is the essence of this Agreement. No delay in exercising any right or remedy, however, shall be deemed a waiver of or preclude the exercise of such right or remedy or constitute a waiver of any existing or subsequent default.
- 17 **Forfeiture.** If Buyer fails to perform this Agreement, Seller may forfeit this Agreement as provided by Iowa Code ch. 656. Buyer shall have no right of reclamation or compensation for money paid or improvements made, if any, which shall be retained by Seller as compensation for use of the Real Property, as liquidated damages, or both. Upon completion of forfeiture, Seller 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.
- 18 **Foreclosure.** If Buyer fails to perform this Agreement, Seller may foreclose this Agreement as provided by Iowa Code chapter 654 and a receiver may be appointed. The period of redemption after sale provided by Iowa Code section 628.3 may be reduced.
- 19 **Attorney Fees & Costs.** Each party to this Agreement shall be responsible for their own attorney fees, if any, and court costs, if any.
- 20 **Joint Tenancy of Seller.** If, and only if, the Seller, immediately preceding the execution of this Agreement, holds 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 Seller in this Agreement, in the proceeds thereof, and in any continuing or recaptured rights of Seller in the Real Property, shall be and continue in Seller as joint tenants with full rights of survivorship and not as tenants in common. Buyer, in the event of the death of one of such joint tenants, agrees to pay any balance then owing under this Agreement to the surviving Seller and to accept a deed executed solely by such survivor.
- 21 **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 party entitled thereto, or (c) served on the party entitled thereto in the manner of an original notice under the Iowa Rules of Civil Procedure, or (d) delivered electronically with acknowledgment of delivery by the receiver, or (e) delivered by a reputable private courier service, such as FedEx or UPS, which provides and does provide evidence of delivery to the party.
- 22 **Affidavit As To Mechanic's Liens.** Seller shall furnish to Buyer at the time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statements, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding the date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of mechanics' liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen and further affirming that all charges for improvements or repairs which could serve as a basis for a mechanic's lien or a claim for damages have been paid or will be paid at the Closing of this Agreement.
- 23 **Broker's Commission.** Seller and Buyer 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.
- 24 **Due Diligence.** Buyer shall have full and continuing access to the Real Property and all parts thereof, as well as to all papers and documents of Seller as they relate to the title, physical condition, development, and operation of the Real Property. Buyer and Buyer's agents shall have the right to enter upon the Real Property at any time after the execution and delivery of this Agreement for any purpose whatsoever, including inspecting, surveying, engineering, test boring, performance of environmental tests, and such other work as Buyer shall consider appropriate, excluding grading and site preparation. Buyer shall have the right to make such inquiries of governmental agencies, utility companies, and others and to make feasibility studies and analyses as Buyer shall consider appropriate. All of the rights exercised under this paragraph shall be upon the conditions that Buyer shall, at Buyer's sole cost, restore the real Property to the condition before Buyer's inspection.
- 25 **Certification.** Seller certifies that Seller is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any executive order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control and that the party is not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation.
- 26 **Entire Agreement.** This instrument constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior oral or written agreements,

statements, representations, and promises. 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.

27 **Parties.** Words and phrases used in this Agreement shall be construed as in the single or plural number and as the masculine, feminine or neuter gender according to the context. "Parties" refers to both Seller and Buyer together. "Party" may refer to either a Seller or a Buyer. If a Seller or a Buyer, as defined in this Agreement, consists of two or more entities or persons, each is jointly and severally liable and responsible for the duties and warranties of that party. Notice given to or knowledge of any condition by any one member of a party that consists of two or more entities or persons is deemed had by the party and all its constituent members.

28 **Interpretation.** This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa. The paragraph headings in this Agreement are for convenience only and in no way define or limit the scope or intent of any provisions of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

IN WITNESS OF THIS Agreement Seller and Buyer have executed this instrument under date of \_\_\_\_\_, 2019.

**SELLER:** Seller has executed this instrument on 7.26, 2019.

  
PHYLLIS RANGE  
A.

**BUYER:** As set forth in Resolution No. \_\_\_\_\_, the Buyer has approved this instrument on \_\_\_\_\_, 2019.

ATTEST: DIANE R. VOSS, City Clerk

JOHN A. HAILA, Mayor