



City Hall, 215 Sycamore St.
Muscatine, IA 52761-3840
(563) 262-4141
Fax (563) 262-4142

COMMUNITY DEVELOPMENT

Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement

MEMORANDUM

To: Mayor and City Council Members
Cc: Gregg Mandsager, City Administrator
From: Dave Gobin, Community Development Director
Date: December 13, 2016
Re: Property Acquisition for MDCP

INTRODUCTION: The City continues to undertake necessary steps to permit the final design and construction of the Mississippi Drive Corridor Project (MDCP).

BACKGROUND: In advance of the final design and engineering, the City has and will acquire property that is deemed appropriate and/or necessary for the Project.

RECOMMENDATION/RATIONALE: The purchase of the property located at 207 Green Street has been discussed with the Owner and a purchase agreement /contract has been prepared for the City Council's consideration. To that end, the City Council is requested to consider the attached resolution approving the Real Estate Contract and authorizing staff to proceed with the purchase of the property located at 207 Green Street.

RESOLUTION No. _____

A RESOLUTION APPROVING THE REAL ESTATE CONTRACT AND AUTHORIZING THE PURCHASE OF REAL ESTATE RELATED TO THE FINAL DESIGN AND CONSTRUCTION OF THE MISSISSIPPI DRIVE CORRIDOR PROJECT.

WHEREAS, The city of Muscatine is acquiring real estate that will be used for public roadway improvements related to the Mississippi Drive Corridor Project; and

WHEREAS, The City has negotiated a contract to purchase the property identified as:

Parcel # 1302159005

Locally known as 207 Green Street, Muscatine, Iowa; and

WHEREAS, The City has agreed to the purchase price of two hundred thousand (\$200,000.00) for said property;

NOW, THEREFORE, BE IT RESOLVED BY THE City Council for the City of Muscatine, Iowa, that the City hereby approves the Real Estate Contract for the purchase of the real estate as set out herein and authorizes the purchase of the property in accordance with the contract, as agreed.

PASSED, APPROVED AND ADOPTED this 15th day of December, 2016.

**BY THE CITY COUNCIL OF THE
CITY OF MUSCATINE, IOWA**

Attest:

Diana Broderson, Mayor

Gregg Mandsager, City Clerk

REAL ESTATE CONTRACT

IT IS AGREED between TeSTRAKE BROTHERS, INC, an Iowa Corporation ("Seller"), and THE CITY OF MUSCATINE, IOWA, ("Buyer"), Seller agrees to sell and Buyer agrees to buy real estate in Muscatine County, Iowa, described as:

Parcel # 1302159005

locally known as 207 Green Street, Muscatine, Iowa, with any easements and appurtenant servient estates, but subject to the following: a) any zoning and other ordinances; b) any covenants of record; and c) any easements of record for public utilities, roads and highways; (the "Real Estate"), upon the following terms:

1. **PRICE.** The total purchase price for the Real Estate is Two Hundred Thousand Dollars (\$200,000.00) payable as follows:

\$1,000.00 submitted herewith, to be held until closing in the trust account of Attorney John L. Hintermeister, receipt of which is acknowledged, and a balance of \$199,000.00 payable in full at time of closing, which shall be on or before the 31st day of March, 2017.

2. **INTEREST.** Buyer shall pay no interest unless Buyer defaults. Buyer shall pay interest at the rate of Ten percent per annum on all delinquent amounts and any sum reasonably advanced by Seller to protect its interest in this contract, computed from the date of the delinquency or advance.

3. **REAL ESTATE TAXES.** Real estate taxes shall be pro-rated between the parties as of the date of possession in the manner normally used by the members of the Muscatine County Bar Association.

4. **SPECIAL ASSESSMENTS.** Seller shall pay all special assessments which are a lien on the Real Estate as of the date of possession. All other special assessments shall be paid by Buyer.

5. **POSSESSION.** Seller shall give Buyer possession of the Real Estate at time of closing.

6. **INSURANCE.** Seller shall not be required to carry property insurance. Each party shall provide its own third party liability coverage.

7. **ABSTRACT OF TITLE.** Seller, at its expense, shall, at the appropriate time, obtain an abstract of title to the Real Estate continued to date and deliver it to Buyer for examination. It shall show merchantable title in Seller in conformity with the contract, Iowa law and the Title Standards of the Iowa State Bar Association. The abstract shall become the property of the Buyer when the purchase price is paid in full, however, Buyer reserves the right to occasionally use the abstract prior to full payment of the purchase price. Seller shall pay the costs of any additional abstracting and title work due to any act or omission of Seller, including transfers by or the death of Seller or its assignees.

8. **FIXTURES, PERSONAL PROPERTY AND GRAIN.** Seller shall have the right, at any time prior to closing, to remove all grain from the bins on the premises, as well as that personal property listed on Attachment A. Any grain or personal property still on the premises on April 1, 2017 shall become the property of Buyer.

9. **CARE OF PROPERTY.** Seller shall take reasonable care of the property during the term of this contract. Seller shall not make any material alteration of the Real Estate prior to closing without the written consent of the Buyer.

10. **DEMOLITION.** Seller consents to the Buyer allowing demolition contractors to visit the premises prior to closing.

11. **INSPECTION.** This contract is subject to the Buyer conducting a general inspection of the premises within 20 days after this contract is fully executed. If Buyer has not canceled this contract within 20 days after it is executed, this contingency will have lapsed. If Buyer cancels this contract, the Buyer's down payment shall be refunded.

12. **HAZARDOUS MATERIAL ASSESSMENT.** Buyer may, at Buyer's expense, conduct a hazardous material assessment to be completed within 45 days after this contract is fully executed. If it is determined that the cost of hazardous material abatement will exceed \$50,000.00, Buyer shall have the right, but not the obligation to cancel this contract. If Buyer cancels this contract, Buyer's down payment shall be refunded.

13. **CONDITION OF PREMISES.** Subject to the referenced inspections, these parties agree that Buyer accepts the premises in its "as-is" condition, with no warranties other than as to merchantability of title.

14. **CONVEYANCE.** Upon payment of the full purchase price, Seller shall convey the Real Estate to Buyer or to its assignees, by Warranty Deed, free and clear of all liens, restrictions, and encumbrances except as provided herein.

15. **REMEDIES OF THE PARTIES.**

- a. If Buyer fails to timely perform this contract, Seller may, at Seller's option, either (i) forfeit Buyer's rights in this contract as provided in the Iowa Code, and all payments made by Buyer shall be forfeited or (ii) upon thirty days written notice by Seller to Buyer of Seller's intention to accelerate the payment of the entire balance because such failure (during which thirty days such failure is not corrected) Seller may declare the entire balance immediately due and payable, and thereafter this contract may be foreclosed in equity; the Court may appoint a receiver; and the period of redemption after sale on foreclosure may be reduced under the conditions of Section 628.26 or Section 628.27 of the Iowa Code.
- b. If Seller fails to timely perform its obligations under this contract, Buyer shall have the right to terminate this contract and have all payments made returned to Buyer.
- c. Buyer and Seller are also entitled to utilize any and all other remedies or actions at law or in equity available to them.
- d. In any litigation relating to this contract the successful party shall be entitled to recover reasonable attorney's fees and costs from the unsuccessful party.

16. **TIME IS OF THE ESSENCE.** Time is of the essence in this contract.

17. **ENVIRONMENTAL MATTERS.** Seller warrants that Seller's activities have not contributed to known hazardous wastes, solid waste disposal sites, underground storage tanks or burial sites on the herein described premises.

18. **DEFINITIONS.** For the purpose hereof, the words "Buyer" and "Seller" shall denote the plural thereof as well as the singular.

19. **BINDING ON HEIRS.** This Contract and every provision of it shall bind and benefit the heirs, devisees, legal representatives, successors, and assigns of the parties hereto.

20. **CONSTRUCTION.** Words and phrases in this contract shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

Signed this _____ day of _____, 2016.

Seller:
TESTRAKE BROTHERS, INC

By: _____
MYRON TeSTRAKE President

Seller's Attorney: John L. Hintermeister

Signed this _____ day of _____, 2016.

Buyer:
THE CITY OF MUSCATINE, IOWA

By: _____

Buyer's Attorney; Duane J. Goedken