



City of Grand Forks
Staff Report
Committee of the Whole – June 24, 2019
City Council – July 1, 2019

Agenda Item: Purchase Agreement for property necessary for construction of Project 7540, District No. 567 – Oscarville Storm Sewer, Storm Pond, Pump Station, and Discharge Ditch

Submitted by: Engineering Department, Mark S. Walker (Assistant City Engineer)
Jonathan D. Olson, (Project Engineer)

Staff Recommended Action: Approve Purchase Agreement for property necessary for construction of Project 7540, District No. 567 – Oscarville Storm Sewer, Storm Pond, Pump Station, and Discharge Ditch, contingent upon approval of the City Attorney

Committee Recommended Action:
Refer to City Council with the recommendation to approve.

Council Action:

BACKGROUND:

In order to facilitate construction of the stormwater pond and discharge ditch for the Oscarville area, approximately 9.3 acres of property will need to be acquired. This acreage includes a parcel for a pond, a parcel for a stockpile, and a parcel for drainage ditch improvements near the English Coulee Diversion. The exact dimensions of the parcels needed have not yet been finalized as of the date this staff report was prepared but should be known within a week. A draft purchase agreement has been drafted by the City Attorney's office and will be updated when the exact dimension of the parcels have been determined. The draft agreement and a drawing showing the property required for the construction of this project is attached.

Project 7540 consists of installing a storm sewer collection system, stormwater pond, pump station, and discharge ditch to serve properties in the Oscarville, Senske, and Lemm's Acres Subdivisions. This area is collectively referred to as the Oscarville area.

Oscarville originally began to develop in the early 1960s. Low maintenance gravel roads were installed to access properties, and with the exception of N 42nd Street, most continue to be used today. Drainage in the area is poor due to undersized ditches and a high water table. There is a significant amount of large truck traffic in this area and the current gravel road sections do not provide adequate year round service, at times becoming impassible. Property owners have repeatedly asked the City to pave the gravel roads in the area but before paving can occur, underground utilities must first be installed. The storm sewer to be installed with this project is the last underground City utility to be installed before paving can begin.

Based on current City policy, the City's cost share in this project would be 15% of the pond construction cost. To avoid causing undue financial distress to properties in this area, City Council approved increasing the City share for this project from 15% to 50% of the regional storm water pond cost.

A public input meeting was held on June 11, 2019, for property owners within the special assessment district. In light of the increased City share of pond construction, no objections to the project were voiced. Property owners who attended the meeting offered support for both the storm sewer and future paving projects in the area.

With the exception of the City share of the regional pond construction, all costs for this project will be special assessed to the benefitting properties. The typical 15% City share of pond construction will be paid for out of Stormwater Fund 5400 and the remaining 35% will be paid for out of Economic Development Fund 2163. Sewer is considered a health/safety infrastructure improvement project and therefore cannot be protested as per State law.

This project has been considered at a number of previous Council/Committee meetings, some which are as follows:

- February 19, 2019 – Council approved the creation of the special assessment district and the design engineering agreement with WFW Engineering.
- May 13, 2019 – An information update was provided to the Committee of the Whole.
- June 3, 2019 – Council approved the Engineer's Report and directed the Engineering Department to prepare plans & specifications, and advertise for construction bids and approved additional funding for the project increasing the City cost participation level for the storm pond from 15% to 50%.
- June 11, 2019 – A Public Input Meeting was held.
- June 17, 2019 – Council approved Plans and Specifications.

ANALYSIS AND FINDINGS OF FACT:

- City staff have been in contact with representatives of the property owners to discuss the purchase of land to construct this project and the following conditions of a land purchase agreement have been suggested and are intended to be incorporated into the Purchase Agreement:
 - Property to be purchased for the pond, pump station, dirt stockpile, and drainage ditch includes approximately 9.3 acres (exact acreage to be determined and incorporated into the final Purchase Agreement).
 - Purchase price is proposed to be \$20,000/acre based upon the purchase price of nearby land that the City acquired a few years ago.

- Permanent and temporary easements needed for the project are to be provided to the City at no additional cost.
- The City is to plat the lot needed for the pond as well as the lot needed for the stockpile.
- The City is to agree that it will not annex the property owner's remaining unplatted property within the next 15 years or until requested by the property owner. After the 15 year period, the annexation would revert back to City policy and the laws of the State of North Dakota.
- Since the Oscarville area was platted before stormwater pond requirements were developed and much of the area is already developed, the stormwater pond and pump station will need to be located in an undeveloped and unplatted area northward of the Oscarville area.
- In addition to land needed for the pond and pump station, land will also be needed to improve an existing drainage ditch to allow stormwater discharged at the pump station to flow northward into the English Coulee Diversion. Additional land will be needed to stockpile material from the excavation of the pond and ditch.
- It is understood that the owners of this undeveloped property include five different family members.
- WFW is currently under contract for design and bidding service for this project with a not to exceed contract amount of \$141,837.
- It is anticipated construction engineering services will be added with a future engineering amendment. The estimated cost of construction engineering services from WFW is \$345,000.
- The total assessment cost for this project, including construction, engineering, land acquisition, and assessment markup fees are estimated to be approximately \$2,831,000.
- The City's 15% share for the regional pond is estimated to be \$200,000 and will be paid out of Stormwater Fund 5400 and the remaining 35% share is estimated to be \$538,000 and will be paid out of Economic Development Fund 2163.
- The project is scheduled to be bid on August 19, 2019.
- Approval of the bids is currently scheduled for the August 26, 2019 Committee of the Whole and September 2, 2019, Council.
- Construction is anticipated to begin late this construction season with some work taking place during the winter months and remaining work completed in 2020.

SUPPORT MATERIALS:

- Draft Purchase Agreement (9 pages – to be updated based on final area of land to be purchased)
- Drawings of Land Purchase and Easements needed (2 pages)

PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2019, by and between Dan Goodman, Vicki Boyce, Doug Goodman, Doak Bentz and Jan Bentz ("Sellers") and the City of Grand Forks, a North Dakota municipal corporation ("Buyer").

Sellers agrees to sell and Buyer agrees to purchase, upon the terms and conditions and subject to the contingencies hereinafter set forth, the real property described as _____ located in the southeast corner of Section 30, Township 152 North, Range 50 West to be platted as _____ (the "Property") and all appurtenances, thereunto belonging, owned by Sellers. The terms and conditions of such sale and purchase are as follows:

1. **PURCHASE PRICE.** The purchase price will be the sum of _____ Dollars (\$ _____) based upon an agreed purchase price of \$ _____ per acre.

2. **PROPERTY TO BE PURCHASED.** The property to be purchased by Buyer and sold by Sellers is legally described as follows:

- A. Fee Purchase _____
- B. Permanent Easement _____
- C. Temporary Easement _____

3. **EARNEST MONEY.** Buyer shall deposit the sum of One Thousand Dollars (\$1,000.00) toward the purchase of the Property. The earnest money shall be held in escrow by Swanson & Warcup, Ltd. during the pendency of the transaction contemplated by this agreement and the earnest money may only be disbursed pursuant to the terms of this agreement. The earnest money required to be deposited under this agreement shall be: (i) applied to the purchase price at closing; (ii) returned to Buyer under circumstances of Sellers' breach of any provision of this agreement; or (iii) disbursed to Sellers if the transaction contemplated herein fails to close as a result of the termination of the agreement by Buyer.

4. **CONVEYANCE OF MARKETABLE TITLE; POSSESSION.** Sellers shall convey the Property to Buyer or its assigns at closing by Warranty Deed, and the Property may only be subject to Permitted Encumbrances defined herein. Notwithstanding the foregoing, any and all liens or encumbrances, such as mortgages, and construction liens, excluding tax special assessment liens, must be satisfied by Sellers prior to or at closing, and marketable title shall be conveyed to Buyer at closing. Possession of the Property shall be delivered to Buyer immediately after the closing.

5. **DELIVERY OF PROPERTY DOCUMENTATION.** Sellers agree to

deliver to Buyer, within ten (10) days of the date that this agreement is fully signed by both Buyer and Sellers (which date is hereinafter referred to as the "date of acceptance"), copies of all previously issued title reports, title opinions, abstracts and title insurance policies relating to the Property that Sellers have in their possession.

6. **DUE DILIGENCE CONTINGENCIES.** The obligation of Buyer to conclude the transaction for the purchase of the Property as contemplated by this agreement is expressly made contingent upon the provisions of this section. In order for Buyer to exercise Buyer's right to terminate this agreement pursuant to the following contingencies, Buyer must provide Sellers with written notification of Buyer's intent to terminate this agreement on or before thirty (30) days after the date of acceptance (the "Due Diligence Period"). If Buyer delivers a timely written notice to Sellers pursuant to any of the contingencies outlined in this section, Buyer's obligation to purchase the Property shall be terminated and Buyer's initial earnest money (\$1,000.00) deposited with Swanson & Warcup, Ltd. shall be returned to Buyer.

- (a) **Title Commitment.** Buyer obtaining, at Buyer's cost, a commitment for title insurance (the "Title Commitment") from a company licensed to transact title insurance in the State of North Dakota. The foregoing Title Commitment shall show title to the Property to be free and clear of all encumbrances excepting only Permitted Encumbrances (defined below) and any liens of record, which shall be paid by Sellers at closing, and shall affirmatively insure at the time of closing that the Property described in the Title Commitment is the same as the property described herein. At closing, Sellers agree to provide to Swanson & Warcup, Ltd. all documentation necessary to delete all nonpermitted encumbrances from the owner's policy of title insurance. "Permitted Encumbrances" as used herein shall be defined as municipal and zoning ordinances, recorded easements for public utilities serving the Property, and such other non-standard title exceptions not objected to by Buyer. If Buyer does not notify Sellers of its objection to any item disclosed in the Title Commitment within the Due Diligence Period, this contingency shall be deemed waived. In the event that Buyer notifies Sellers of an objection to the status of title to the Property as disclosed by the foregoing Title Commitment, Sellers shall be granted a reasonable period, not exceeding thirty (30) days, in which to remove Buyer's objections and, subject to the other limitations and contingencies set forth in this agreement, the closing date shall be extended as necessary for this purpose. If Sellers are unable, after using reasonable diligence, to remove Buyer's objections within such thirty (30) day period, Buyer may provide Sellers written notification of its intent to terminate this agreement within thirty (30) days or this contingency shall be deemed waived. No further or additional exceptions to the Title Commitment or to the final title policy may be added after the passage of the contingency provided for in this

section unless Buyer agrees in writing.

- (b) Inspection. Buyer (or any other construction professional of Buyer's choosing) may conduct an inspection of the Property. Buyer shall have the right (but not the obligation) to perform physical site investigations, including but not limited to the right to enter the property for purposes of performing the survey and to perform soil borings on the Property. Buyer agrees to restore, or have its contractors and other agents restore, any land affected by any borings on the Property and after Buyer's investigation of the Property is complete. Buyer and Sellers agree that Buyer's obligation to restore the Property shall be limited to returning the land affected to the grade existing before the investigations and borings were conducted.
- (c) Wetland Delineation. Buyer obtaining, at Buyer's cost, and in Buyer's sole discretion, a satisfactory result from any wetland delineation on the Property which may be required by the U.S. Army Corps of Engineers. If Buyer is not able to obtain satisfactory results from any wetland delineation, Buyer may provide Sellers written notification of its intent to terminate within the due diligence period or this contingency shall be deemed waived.

7. **TAXES AND SPECIAL ASSESSMENTS.** The general taxes and any installments of special assessments for the year of closing, regardless of when payable, shall be prorated to date of closing, based on the most recent tax year information available, with Sellers being responsible for the day of the closing. Taxes and installments of special assessments for all prior years to the year of closing, regardless of when payable, shall be paid by Sellers on or before closing. Buyer shall assume any uncertified balance of special assessments payable in future years.

8. **REPRESENTATION AND WARRANTIES.** As a material inducement to cause Buyer to enter into this agreement, Sellers warrant and represent to Buyer, with respect to the Property as follows (Sellers' warranties and representations are true and correct in all material respects on the date of the agreement and shall be true and correct in all material respects on the closing date and shall survive the closing of the transaction contemplated hereby):

- (a) There are no actions, lawsuits, judgments, liens, suits, claims, investigations or other proceedings pending or threatened against Sellers or the Property which relates to Sellers or the ownership, maintenance, or operation of the Property or might in any way affect the Property or this transaction.
- (b) To Sellers' knowledge, there is no environmental condition, situation or incident that could in any manner give rise to any action or liability under any

environmental law, and Sellers are not subject to and are not currently operating under any compliance or consent order, schedule, decree or agreement issued or entered into under any environmental law. The Property has never been used as a landfill or as a garbage dump. No portion of the Property is located within a wetland.

- (c) No building or other improvement other than a quonset and 2 grain buildings exist on the Property. No buildings encroach on the Property from other properties, nor does any improvement which is part of the Property encroach on lands of others or on any public or private road or right of way.
- (d) None of the Sellers are foreign persons within the meaning of § 1445 of the Internal Revenue Code of 1986, as amended. Sellers shall complete an appropriate Certificate of Non-Foreign Status at closing confirming the accuracy of this representation.
- (e) Sellers have good and marketable title to the Property. Sellers have the full right, power and authority to sell, convey and transfer the Property herein and to execute, deliver and carry out the provisions of this agreement. No leases or right of possession affect the Property. No person or entity has provided labor or materials to the Property within six (6) months prior to closing whose claim for such labor or material has not been fully paid.
- (f) Each individual executing this agreement on behalf of Sellers are duly authorized to execute and deliver the same on behalf of Sellers.
- (g) Each of the parties hereto represent and warrant to the other that no broker or agent has been used in the negotiations or transactions contemplated by this agreement.
- (h) The Property is currently leased to _____ for farming purposes. The term of the Lease ends on _____. The farm tenant is currently growing a crop of _____ which will be removed no later than _____. The Sellers represent there is no default existing under the terms of said Lease. To secure transfer of possession of the Property no later than _____, a portion of the purchase price (\$ _____), shall be held in escrow pending transfer of the Property as is more fully set forth in paragraphs 1 and 4 herein.

9. **ANNEXATION.** The parties hereto agree to enter into an Agreement for Annexation which states the property described as _____ shall not be subject to annexation, except as provided below, prior to 15 years after the date of closing.

Annexation shall be undertaken by the City of Grand Forks at any time upon any of the following conditions:

- (a) Public improvements, including but not limited to, sewer and water, are constructed upon any portion of the property.
- (b) Change in zoning.
- (c) Development.
- (d) Platting.

Notwithstanding the foregoing, the Sellers may petition to annex, by ordinance or resolution, any of the property described in the Agreement for Annexation at an earlier date or event than described above.

The Sellers shall agree to expressly waive any and all right of protest or objection to the annexation of all or any portion of the property described in the Agreement for Annexation unless annexation is commenced by the City in a manner contrary to the terms of the Agreement.

The Sellers expressly understand that the property described in the Agreement for Annexation shall be subject to any tapping or connection fees or other fees or assessments as established by the Grand Forks City Council.

10. **WATER AND ENVIRONMENTAL POLLUTION:**

- (a) Environmental Compliance. As of the execution of this Purchase Agreement, the Property will not be in violation of any federal, state or local law, ordinance or regulation relating to environmental conditions, hazardous materials or waste or toxic materials or waste on, under, or about the Property including, without limitation, laws relating to emissions, discharges, releases or threatened releases of industrial, toxic or "hazardous substances" as defined in 42 U.S.C. 9601(14), or wastes or other pollutants, contaminants, petroleum products/oil or chemicals (collectively, "Hazardous Materials") into the environment (including without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (the "Environmental Laws").

Without limiting the above, Sellers represent and warrant that:

- (i) During the time in which Sellers owned or controlled the use of the Property, neither Sellers nor, to the best of Sellers' knowledge, after due and diligent inquiry, any third party has used, manufactured, stored or disposed of, on, under, or about the Property or transported to or from the Property any ignitable, explosive, reactive, toxic or radioactive materials or wastes, or other characteristic or listed Hazardous Materials or wastes, or other similar materials or wastes.
 - (ii) Sellers shall disclose to Buyer all reports and investigations commissioned by Sellers, their agents, predecessors and assigns, relating to Hazardous Materials and the Property, or any part thereof. Further, Sellers have not at any time received any verbal or written notice from any person, entity, or governmental body demanding payment of contribution from Sellers for environmental damage or injury to natural resources.
 - (iii) There has been no "release" as defined in 42 U.S.C. 9601(22) or, to the knowledge of Sellers, threat of a "release" of any Hazardous Materials on, from or under the Property;
- (b) Environmental Assessment. In addition to the representations and warranties of Sellers, Buyer shall have the right to have access to the Property to enable an independent environmental consultant chosen by Buyer to inspect, audit and test the Property for the existence of environmental conditions and violations of environmental laws ("Environmental Assessment"). Buyer may perform soil, air and groundwater sampling and testing. The scope, sequence and timing of the Environmental Assessment shall be at the sole discretion of the Buyer but shall be conducted in a manner which will minimize disruption to the occupants, if any, of the Property. Sellers further authorizes Buyer and its agents to review any and all documents which Sellers possesses that pertain to Hazardous Materials and pollution. Sellers hereby agree to furnish said documents to Buyer within ten (10) days after the signing of this agreement.
- (c) Inspection Period. The Environmental Assessment may be commenced any time after this date and shall be completed no later than thirty (30) days from the date of this agreement (the "Inspection Period"). The cost and expense of the Environmental Assessment shall be borne by Buyer.
- (d) Right to Terminate. Buyer may terminate this agreement no later than five (5) business days after the expiration of the Inspection Period by so notifying Sellers if the Environmental Assessment reveals or, if at any time prior to the

expiration of the Inspection Period, Buyer otherwise becomes aware of the existence of any environmental condition or violation of an environmental law which Buyer is unwilling to accept, in Buyer's sole and subjective discretion.

11. **RISK OF LOSS.** The risk of loss or damage to the Property or for any liability relating to the Property shall remain with Sellers.

12. **CLOSING DATE; CLOSING COSTS.** The closing on the transaction contemplated by this agreement shall occur within thirty (30) days after the date that the Due Diligence Period (as described in section 6 herein) lapses or is earlier waived in writing by Buyer, or on such other date and at a reasonable time as may be agreed to by both Buyer and Sellers. The location of the closing shall be at Swanson & Warcup, Ltd., unless the parties mutually agree to another location. Sellers shall be responsible for the payment of the following closing costs: (i) preparation of the Warranty Deed (ii) preparation of and recording expense of all releases, satisfactions and corrective documents, (iii) any transfer fees and/or taxes assessed or to be assessed in connection with the conveyance of the Property, and (iv) Sellers' attorney fees. Buyer shall be responsible for the payment of the following closing costs: (i) recording fee for the Warranty Deed, (ii) one-half of closing agent fees, (iii) the insurance premium for an owner's policy of title insurance in an amount equal to the purchase price; and (iv) Buyer's attorney fees.

13. **ENTIRE AGREEMENT.** This agreement constitutes the entire agreement by and between the parties and any other prior representations or agreements are deemed merged herein and those not specified herein do not represent any agreements or promises or covenants or representations on the part of either party hereto.

14. **AMENDMENTS, MODIFICATIONS OR WAIVERS.** No amendment, modification or waiver of any condition, provision or term shall be valid or of any effect unless made in writing signed by the party or parties to be bound or a duly authorized representative and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by any party of any default of another party shall not effect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein shall limit the remedies and rights of the parties thereto under and pursuant to this agreement.

15. **CONSTRUCTION OF AGREEMENT.** Whenever the singular number is used herein, the same shall include the plural where appropriate, and the words of any gender shall include any other genders where appropriate. Captions contained herein are inserted only for the purpose of convenient reference, and in no way define, limit or describe the scope of this agreement or any part thereof.

16. **BINDING EFFECT.** This agreement shall be binding upon and inure to the

benefit of the parties hereto and their respective personal representatives, successors and assigns.

17. **COUNTERPARTS; FACSIMILE ANDE-MAILED SIGNATURES.** This agreement may be executed in two (2) or more counterparts each of which, upon execution and delivery as prescribed, shall be deemed to be an original for all purposes. In proving this agreement, it shall be necessary to account for only one such counterpart. Buyer and Sellers agree that facsimile and e-mailed (.pdf) signatures will be binding on the parties.

18. **TIME IS OF THE ESSENCE.** Time is of the essence of each provision of this agreement and of all the conditions thereof.

19. **SPECIFIC PERFORMANCE.** Subject to the contingencies provided in this agreement, if either party defaults and fails to carry out its obligations pursuant to the terms of this agreement, the other party shall have the right to seek specific performance of this agreement.

20. **NOTICES.** All notices, demands and communications provided for herein or made hereunder shall be deemed effective upon receipt by the other party, either by facsimile, electronic mail, personal delivery or upon receipt if mailed first class with postage prepaid, addressed in each case as follows, until some other addresses shall have been designated in a written notice given in a like manner, and shall be deemed to have been given or made when so received at the following addresses:

Sellers: _____

Buyer: City of Grand Forks
c/o Allen E. Grasser, City Engineer
255 North 4th Street
Grand Forks, ND 58203
agrasser@grandforksgov.com

With a copy to:

John A. Warcup, Assistant City Attorney
City of Grand Forks
P.O. Box 12909
Grand Forks, ND 58208-2909
jwarcup@swlawltd.com

21. **DATE OF CLOSING.** Closing of the transaction contemplated hereby shall be held on or before thirty (30) days after the Due Diligence Period of this agreement has expired (the closing date).

IN TESTIMONY WHEREOF, Sellers and Buyer have hereunto set their hands the day and year first above written.

SELLERS:

Dan Goodman

Vicki Boyce

Doug Goodman

Doak Bentz

Jan Bentz

**CITY OF GRAND FORKS, A NORTH DAKOTA
MUNICIPAL CORPORATION**

By: _____
Michael R. Brown, Its Mayor

By: _____
Maureen Storstad, Its City Auditor



ENGLISH COULEE DIVERSION

DITCH
EXPANSION

INTERSTATE 29

POND LOT

STOCKPILE
LOT

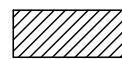
27TH AVENUE NORTH

OSCARVILLE STORM SEWER, STORM POND, PUMP STATION, AND DISCHARGE DITCH

PROJECT # 7540

DISTRICT # 567

LEGEND



CITY LAND
ACQUISITION



ENGLISH COULEE DIVERSION

50' TEMPORARY
CONSTRUCTION
EASEMENT

INTERSTATE 29

33' PERMANENT DITCH
EASEMENT AND
50' TEMPORARY
CONSTRUCTION
EASEMENT

50' TEMPORARY
CONSTRUCTION
EASEMENT

POND
LOT

STOCKPILE
LOT

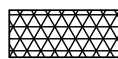
27TH AVENUE NORTH

OSCARVILLE STORM SEWER, STORM POND, PUMP STATION, AND DISCHARGE DITCH

PROJECT # 7540

DISTRICT # 567

LEGEND



PERMANENT AND
CONSTRUCTION EASEMENT