

Agenda Item: 10.

MEMORANDUM

TO: Finance, Expenditures and Legal Subcommittee

FROM: Lori Ann Laster, Stormwater Management Engineer

SUBJECT: Review and Recommendation on King Lake Purchase Agreements

DATE: May 5, 2015

The District has received grant funding to purchase 42 properties in the floodplain in the King Lake area. The District hired Mitchell & Associates to perform an appraisals of the properties included in the grant application. According to the Flood Insurance Rate Map for Douglas County, Panel 31153C 0160 J, effective May 19, 2014, the property is located in the Zone AE floodplain of the Elkhorn River.

Property owners William and Debra Huser have accepted the appraisals prepared on November 7, 2014 and December 10, 2014 for two lots located at 246th Street and King Lake Road (see attached map). The properties consist of a vacant lot appraised at \$2,000 and a commercial storage rental property appraised at \$30,500 (see attached purchase agreements).

Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute for and on behalf of the District the Purchase Agreements in the forms as presented to this meeting providing for the purchase by the District from William and Debra Huser, of Lot 1, Gieselmans Subdivision for the purchase price of \$2,000, and for the purchase of land and improvements at 6006 North 246th Street for the purchase price of \$30,500, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

**PURCHASE AGREEMENT
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
FLOODWAY PURCHASE PROGRAM**

THIS AGREEMENT (hereinafter referred to as "THIS AGREEMENT") is dated as of this 4th day of May, 20 15, by and between WILLIAM D. HUSER and DEBRA A. HUSER and DEBRA A. HUSER (hereinafter referred to as "SELLER") and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (hereinafter referred to as "PURCHASER").

SELLER hereby agrees to sell and convey to PURCHASER, and PURCHASER hereby agrees to purchase and accept from SELLER, certain real property upon the following terms and conditions:

1. Property. The Property of SELLER to be sold to PURCHASER pursuant to THIS AGREEMENT consists of the marketable fee simple title to LOT 1, GIESELMANS SUBDIVISION (hereinafter referred to as "the PROPERTY").

2. Price. The purchase price that PURCHASER agrees to pay to SELLER for the PROPERTY (hereinafter referred to as the PURCHASE PRICE") is the sum of TWO THOUSAND DOLLARS (\$2,000).

3. Payment. The PURCHASE PRICE shall be paid by PURCHASER to SELLER at the time of closing, by PURCHASER'S certified bank check.

4. Deed. The PROPERTY shall be conveyed by SELLER to PURCHASER by Full Warranty Deed, free and clear of all leases, mortgages, liens (including real estate taxes) and other encumbrances, except easements and protective covenants now of record, all such excepted items hereinafter being referred to collectively as "the PERMITTED EXCEPTIONS."

5. Title Insurance. Within 60 days after the date of THIS AGREEMENT, PURCHASER shall deliver to SELLER a commitment for a title insurance policy for the PROPERTY.

(a) Such commitment shall be issued by an authorized company in the amount of the purchase price and shall show marketable fee simple title to the PROPERTY to be vested in SELLER, subject only to the PERMITTED EXCEPTIONS aforesaid and liens and encumbrances of an ascertainable amount which may be removed by the payment of money at the time of closing and which SELLER may so remove at that time by using a portion of the purchase price to be paid at closing, including deposit of same for SELLER'S account with the title insurer pursuant to a "title indemnity" or similar escrow arrangement pending removal or release of such liens or encumbrances. The aforesaid policy or commitment shall be conclusive evidence of good title as therein shown as to all matters insured or to be insured by the policy.

(b) If the aforesaid commitment discloses any exceptions to title other than the PERMITTED EXCEPTIONS (hereinafter referred to as the "NONPERMITTED EXCEPTIONS"), SELLER shall have 30 days from the date of delivery of the commitment to SELLER to have the NONPERMITTED EXCEPTIONS removed from the policy or commitment, or, at SELLER'S expense, to have the title insurer commit to

insure against loss or damage that may be occasioned by such NONPERMITTED EXCEPTIONS, and in such event, the time of closing shall be the day following the date of such removal of exceptions or commitment to insure, or the date for closing as provided herein, whichever comes later.

(c) If SELLER fails to have the NONPERMITTED EXCEPTIONS removed, or in the alternative, to obtain the commitment for title insurance specified above as to such NONPERMITTED EXCEPTIONS within the specified time, PURCHASER may, at PURCHASER'S election, terminate THIS AGREEMENT as to all of the PROPERTY or take title as then is, in either case by giving SELLER written notice of PURCHASER'S election and, in the latter case, by tendering performance on PURCHASER'S part. If PURCHASER fails to give notice of such election within ten days after the expiration of the aforesaid 30 days, then PURCHASER shall be deemed to have elected to take title as it then is, and this transaction shall close in accordance with the preceding provisions hereof. If PURCHASER shall give notice of PURCHASER'S election to terminate THIS AGREEMENT, as aforesaid, within the time provided, then THIS AGREEMENT shall thereupon, without further action by any party, become null and void and neither party shall have any obligation hereunder.

6. Survey. All surveys that PURCHASER may require in connection with the closing of this transaction, shall be at the expense of PURCHASER.

7. Eminent Domain. It is agreed among the parties that THIS AGREEMENT is entered into voluntarily, SELLER having been informed that this is a voluntary program and that PURCHASER will not use its power of eminent domain (condemnation) to acquire the PROPERTY.

8. Closing. This transaction shall be closed at 4 pm, on May 29, 2015, at the address of PURCHASER set out below, or at such other date, time or place as may be agreed upon in writing by SELLER and PURCHASER.

9. Taxes. All taxes relating to the PROPERTY must be paid prior to closing and SELLER shall provide proof of payment at closing.

10. Delivery of possession. Possession of the PROPERTY, subject to the PERMITTED EXCEPTIONS, shall be delivered to PURCHASER at closing or at such other time as may be agreed upon in writing by SELLER and PURCHASER.

11. Revenue Stamps. All documentary stamp taxes shall be paid by PURCHASER to the extent that this transaction is not exempt there from.

12. Assignment. THIS AGREEMENT, and/or any interest of SELLER hereunder, may not be assigned in whole or in part by SELLER without the prior written consent of PURCHASER.

13. Recordation. THIS AGREEMENT may be recorded in whole or in part

14. Entire Agreement. THIS AGREEMENT contains the entire AGREEMENT between the parties, and SELLER agree that neither PURCHASER, nor any of its officers, agents, or employees, have made any representation or promise with respect to, or affecting the PROPERTY or adjoining real estate, or THIS AGREEMENT, not expressly contained herein.

15. Governing law. The provisions of THIS AGREEMENT shall be governed by, and construed in accordance with, the laws of the State of Nebraska.

16. Captions. The captions contained in THIS AGREEMENT are for convenience only and are not intended to limit or define the scope or effect of any provision of THIS AGREEMENT.

17. Time. Time is of the essence of THIS AGREEMENT.

18. Default and Specific Performance. If SELLER shall default hereunder, PURCHASER shall be entitled to enforce specific performance of THIS AGREEMENT or may terminate THIS AGREEMENT, at PURCHASER'S option.

19. Notices. All notices herein required shall be in writing and shall be served on the parties at the addresses set out below, or at such other address as either party may hereafter designate in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service.

20. Survival of conditions. The terms and conditions of THIS AGREEMENT, and all representations, covenants, warranties, and agreements made herein, shall survive the closing of this transaction, and shall not be deemed to have merged or terminated upon closing.

21. Binding effect. The provisions of THIS AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective parties hereto.

22. Salvage. After the execution of THIS AGREEMENT and by the date for closing provided herein, SELLER shall have the right, at SELLER'S cost, to remove from the PROPERTY and convert to SELLER'S own use any and all personal property, including but not limited to any garage, shed and/or residential dwelling on the PROPERTY, including contents of structures and fences. Until the closing, SELLER shall bear the risk of loss of all structures or other improvements on the PROPERTY and shall have an insurable interest therein. SELLER shall not commit waste as to any other structure or improvement on the PROPERTY. Any partial salvage of a building or other structure on the PROPERTY by SELLER shall be done in a good and workmanlike manner so as not to impair the structural integrity of the building or structure. The openings for any doors or windows that are removed from any structure shall be boarded up so as to prevent unauthorized entry into the structure. SELLER agrees to hold harmless and defend PURCHASER from any and all claims, actions, or damages resulting from SELLER'S salvage as described herein. Prior to removing any garage, shed and/or residential dwelling on the PROPERTY, SELLER shall submit to PURCHASER for PURCHASER'S approval a detailed plan outlining SELLER'S salvage plan. The proposed plan shall include a list of what is to be salvaged and the location of any real estate intended as a permanent site for any structure salvaged from the PROPERTY. As soon as such salvage is completed according to the approved plan, SELLER shall notify the General Manager of PURCHASER and an agent of PURCHASER will conduct a final inspection of the PROPERTY.

IN WITNESS WHEREOF the parties hereto have set their hands.

PAPIO-MISSOURI RIVER NATURAL RESOURCES
DISTRICT

**PURCHASE AGREEMENT
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
FLOODWAY PURCHASE PROGRAM**

THIS AGREEMENT (hereinafter referred to as "THIS AGREEMENT") is dated as of this 4th day of May, 20 15, by and between WILLIAM D. HUSER and DEBRA A. HUSER and DEBRA A. HUSER (hereinafter referred to as "SELLER") and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (hereinafter referred to as "PURCHASER").

SELLER hereby agrees to sell and convey to PURCHASER, and PURCHASER hereby agrees to purchase and accept from SELLER, certain real property upon the following terms and conditions:

1. Property. The Property of SELLER to be sold to PURCHASER pursuant to THIS AGREEMENT consists of the marketable fee simple title to LOT 2, GIESELMANS SUBDIVISION (hereinafter referred to as "the PROPERTY").

2. Price. The purchase price that PURCHASER agrees to pay to SELLER for the PROPERTY (hereinafter referred to as the PURCHASE PRICE") is the sum of THIRTY THOUSAND FIVE HUNDRED DOLLARS (\$30,500).

3. Payment. The PURCHASE PRICE shall be paid by PURCHASER to SELLER at the time of closing, by PURCHASER'S certified bank check.

4. Deed. The PROPERTY shall be conveyed by SELLER to PURCHASER by Full Warranty Deed, free and clear of all leases, mortgages, liens (including real estate taxes) and other encumbrances, except easements and protective covenants now of record, all such excepted items hereinafter being referred to collectively as "the PERMITTED EXCEPTIONS."

5. Title Insurance. Within 60 days after the date of THIS AGREEMENT, PURCHASER shall deliver to SELLER a commitment for a title insurance policy for the PROPERTY.

(a) Such commitment shall be issued by an authorized company in the amount of the purchase price and shall show marketable fee simple title to the PROPERTY to be vested in SELLER, subject only to the PERMITTED EXCEPTIONS aforesaid and liens and encumbrances of an ascertainable amount which may be removed by the payment of money at the time of closing and which SELLER may so remove at that time by using a portion of the purchase price to be paid at closing, including deposit of same for SELLER'S account with the title insurer pursuant to a "title indemnity" or similar escrow arrangement pending removal or release of such liens or encumbrances. The aforesaid policy or commitment shall be conclusive evidence of good title as therein shown as to all matters insured or to be insured by the policy.

(b) If the aforesaid commitment discloses any exceptions to title other than the PERMITTED EXCEPTIONS (hereinafter referred to as the "NONPERMITTED EXCEPTIONS"), SELLER shall have 30 days from the date of delivery of the commitment to SELLER to have the NONPERMITTED EXCEPTIONS removed from the policy or commitment, or, at SELLER'S expense, to have the title insurer commit to

insure against loss or damage that may be occasioned by such NONPERMITTED EXCEPTIONS, and in such event, the time of closing shall be the day following the date of such removal of exceptions or commitment to insure, or the date for closing as provided herein, whichever comes later.

(c) If SELLER fails to have the NONPERMITTED EXCEPTIONS removed, or in the alternative, to obtain the commitment for title insurance specified above as to such NONPERMITTED EXCEPTIONS within the specified time, PURCHASER may, at PURCHASER'S election, terminate THIS AGREEMENT as to all of the PROPERTY or take title as then is, in either case by giving SELLER written notice of PURCHASER'S election and, in the latter case, by tendering performance on PURCHASER'S part. If PURCHASER fails to give notice of such election within ten days after the expiration of the aforesaid 30 days, then PURCHASER shall be deemed to have elected to take title as it then is, and this transaction shall close in accordance with the preceding provisions hereof. If PURCHASER shall give notice of PURCHASER'S election to terminate THIS AGREEMENT, as aforesaid, within the time provided, then THIS AGREEMENT shall thereupon, without further action by any party, become null and void and neither party shall have any obligation hereunder.

6. Survey. All surveys that PURCHASER may require in connection with the closing of this transaction, shall be at the expense of PURCHASER.

7. Eminent Domain. It is agreed among the parties that THIS AGREEMENT is entered into voluntarily, SELLER having been informed that this is a voluntary program and that PURCHASER will not use its power of eminent domain (condemnation) to acquire the PROPERTY.

8. Closing. This transaction shall be closed at 4 pm, on May 29, 2015, at the address of PURCHASER set out below, or at such other date, time or place as may be agreed upon in writing by SELLER and PURCHASER.

9. Taxes. All taxes relating to the PROPERTY must be paid prior to closing and SELLER shall provide proof of payment at closing.

10. Delivery of possession. Possession of the PROPERTY, subject to the PERMITTED EXCEPTIONS, shall be delivered to PURCHASER at closing or at such other time as may be agreed upon in writing by SELLER and PURCHASER.

11. Revenue Stamps. All documentary stamp taxes shall be paid by PURCHASER to the extent that this transaction is not exempt there from.

12. Assignment. THIS AGREEMENT, and/or any interest of SELLER hereunder, may not be assigned in whole or in part by SELLER without the prior written consent of PURCHASER.

13. Recordation. THIS AGREEMENT may be recorded in whole or in part

14. Entire Agreement. THIS AGREEMENT contains the entire AGREEMENT between the parties, and SELLER agree that neither PURCHASER, nor any of its officers, agents, or employees, have made any representation or promise with respect to, or affecting the PROPERTY or adjoining real estate, or THIS AGREEMENT, not expressly contained herein.

15. Governing law. The provisions of THIS AGREEMENT shall be governed by, and construed in accordance with, the laws of the State of Nebraska.

16. Captions. The captions contained in THIS AGREEMENT are for convenience only and are not intended to limit or define the scope or effect of any provision of THIS AGREEMENT.

17. Time. Time is of the essence of THIS AGREEMENT.

18. Default and Specific Performance. If SELLER shall default hereunder, PURCHASER shall be entitled to enforce specific performance of THIS AGREEMENT or may terminate THIS AGREEMENT, at PURCHASER'S option.

19. Notices. All notices herein required shall be in writing and shall be served on the parties at the addresses set out below, or at such other address as either party may hereafter designate in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service.

20. Survival of conditions. The terms and conditions of THIS AGREEMENT, and all representations, covenants, warranties, and agreements made herein, shall survive the closing of this transaction, and shall not be deemed to have merged or terminated upon closing.

21. Binding effect. The provisions of THIS AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective parties hereto.

22. Salvage. After the execution of THIS AGREEMENT and by the date for closing provided herein, SELLER shall have the right, at SELLER'S cost, to remove from the PROPERTY and convert to SELLER'S own use any and all personal property, including but not limited to any garage, shed and/or residential dwelling on the PROPERTY, including contents of structures and fences. Until the closing, SELLER shall bear the risk of loss of all structures or other improvements on the PROPERTY and shall have an insurable interest therein. SELLER shall not commit waste as to any other structure or improvement on the PROPERTY. Any partial salvage of a building or other structure on the PROPERTY by SELLER shall be done in a good and workmanlike manner so as not to impair the structural integrity of the building or structure. The openings for any doors or windows that are removed from any structure shall be boarded up so as to prevent unauthorized entry into the structure. SELLER agrees to hold harmless and defend PURCHASER from any and all claims, actions, or damages resulting from SELLER'S salvage as described herein. Prior to removing any garage, shed and/or residential dwelling on the PROPERTY, SELLER shall submit to PURCHASER for PURCHASER'S approval a detailed plan outlining SELLER'S salvage plan. The proposed plan shall include a list of what is to be salvaged and the location of any real estate intended as a permanent site for any structure salvaged from the PROPERTY. As soon as such salvage is completed according to the approved plan, SELLER shall notify the General Manager of PURCHASER and an agent of PURCHASER will conduct a final inspection of the PROPERTY.

IN WITNESS WHEREOF the parties hereto have set their hands.

PAPIO-MISSOURI RIVER NATURAL RESOURCES
DISTRICT

