

TO: MAYOR AND CITY COUNCIL

FROM: Neil Jensen, City Administrator

SUBJECT: Malloy Lot Purchase 2023 reconstruction Project

MEETING DATE: April 18, 2023

BACKGROUND

As part of the 2023 Reconstruction Project the city needed to purchase part of the Rich and Paige Malloy lot that sits on the corner of 3rd Street and Cannon Street. There currently is a mortgage on the property and the city needs to work with the bank that financed the property. The survey of the property is attached for your review. The piece we wish to purchase is a 60 by 20 foot triangle that actually extends out into the 3rd Street roadway. We will use the other portion of the land to place the lift station for the river crossing.

The purchase price is \$30,270.58. There will also be a partial release application fee (\$250) and the cost of the appraisal (TBD) and misc. recording fees, account management fees. The size of the property is approximately .14 acres +/-.

The Finance Committee has reviewed and approved the Purchase Agreement and made a recommendation to the City Council.

STAFF RECOMMENDATION

Please consider the purchase of the partial lot from Rich and Paige Malloy of .14 acres +/- in the amount of \$30,270.58.

REQUESTED COUNCIL ACTION

Please make a motion to approve the Purchase Agreement with Paige and Rich Malloy in the amount of \$30,270.58.

**REAL ESTATE PURCHASE AGREEMENT
(Cannon Falls, Minnesota)**

THIS REAL ESTATE PURCHASE AGREEMENT (the “**Agreement**”) is made and effective as of the ____ day of _____, 2023 (the “**Effective Date**”) by and between the **City of Cannon Falls** (the “**City**”), and **Richard Malloy and Paige Malloy** (collectively, the “**Seller**”). The City and Seller are each a “**Party**” and collectively the “**Parties**” to this Agreement.

WHEREAS, the Seller owns property in the City identified as Parcel Number 52.500.0030;

WHEREAS, the City is planning the 2023 Reconstruction Project (the “**Project**”), which will include public improvements impacting Seller’s property;

WHEREAS, the City requested to purchase the portion of Seller’s property legally described on the attached **Exhibit A** for the Project (the “**Property**”);

WHEREAS, the Property is encumbered by a mortgage (the “**Mortgage**”) granted by the Seller to U.S. Bank, including its successors and assigns (collectively, the “**Lender**”), which must be released prior to the Closing (defined below); and

WHEREAS, Seller has agreed to sell, and the City has agreed to purchase, the Property on the terms and conditions stated in this Agreement.

NOW, THEREFORE, in consideration of the Parties’ mutual covenants and representations in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Sale of Property**. Subject to the terms and conditions stated in this Agreement, Seller agrees to sell to the City, and the City agrees to purchase from Seller, the Property.

2. **Subdivision**. The Parties acknowledge and agree the Property shall be subdivided from the remainder of Parcel Number 52.500.0030 pursuant to applicable Cannon Falls City Code provisions at or prior to the Closing. Seller agrees to provide the City all documents and other information the City deems reasonably necessary to subdivide Parcel Number 52.500.0030.

3. **Purchase Price**. In consideration for the purchase of the Property and subject to the terms and conditions set forth in this Agreement, the City shall pay to Seller at Closing the amount of Thirty Thousand Two Hundred Seventy and 58/100 (\$30,270.58.00) (the “**Purchase Price**”) in cash or otherwise immediately available funds.

4. **Real Estate Taxes**. At Closing, the real estate taxes which are due for the year of Closing shall be pro-rated between the Parties, based upon the Closing date. Any and all outstanding special assessments shall be paid by Seller at Closing. All real estate taxes and installments of special assessments due after the date of Closing shall be the responsibility of the City. As of the Effective Date, there are no pending or levied special assessments or real estate taxes due and owing on the Property.

5. **Survey and Title Examination.**

a. **Title Commitment.** Within five (5) business days following the Effective Date, the City shall order a title commitment for an Owner's Policy of Title Insurance ("**Title Commitment**") from a title company of the City's choosing ("**Title Company**"). The cost of the Title Commitment shall be paid by the City at Closing and the cost of any title insurance, if purchased by the City, shall be paid by the City.

b. **Survey.** The City shall order an ALTA survey for the Property (the "**Survey**"). Certification of the Survey shall also include the Seller. The cost of the Survey shall be paid by the City.

c. **City's Title Objections.** Within twenty (20) days following the receipt of the Title Commitment, the City shall provide Seller with written notice of any objections to matters disclosed on the Title Commitment ("**Title Objections**"). The twenty (20) day period for Seller to provide Title Objections shall hereinafter be referred to as "**Title Review Period.**" Any items noted on the Title Commitment to which City does not provide the Title Objections during the Time Review Period will be deemed to be Permitted Exceptions (as defined in Section 10(b)(1)). If the City provides Title Objections within the Title Review Period, then within ten (10) business days ("**Seller's Title Response Period**") Seller may notify the City in writing ("**Seller's Title Response Notice**") of the Title Objections which Seller agrees to satisfy on or prior to the Closing, at Seller's sole cost and expense, and of the Objections that Seller cannot or will not satisfy (if Seller does not provide a Seller's Title Response Notice then it shall be recognized and agreed that Seller will not satisfy the Title Objections). Notwithstanding the foregoing sentence, Seller will, in any event, be obligated to cure those Title Objections (i) that are monetary liens against the Property or (ii) are other encumbrances that have been voluntarily placed against the Property by Seller after the Title Objections are provided and that will not otherwise be satisfied on or before the Closing ((i) and (ii) collectively, the "**Required Removal Items**"). If Seller will not cure the Title Objections to the City's satisfaction, the City has ten (10) business days following, the earlier of, (i) receipt of the Seller's Title Response Notice or (ii) ten (10) days after the Seller's Title Response Period if no Seller's Title Response Notice is provided to either (i) terminate this Agreement by giving written notice of termination to Seller and this Agreement will be terminated without any obligations surviving hereunder, except those expressly stated to survive early termination or (ii) elect to close, in which case the City will be deemed to have waived such Title Objections and such Title Objections will become Permitted Exceptions.

6. **Due Diligence Period.** For a period of ninety (90) days following the Effective Date ("**Due Diligence Period**"), the City shall have the right to enter upon the Property and surrounding area from time to time and, at the City's sole cost, expense and risk, to examine and inspect the same. The City shall be allowed to invite consultants, engineers and inspectors onto the Property and to conduct tests and examinations with regard to the Property. The City shall promptly restore the Property to substantially the same condition in which it existed immediately prior to any physical tests conducted by the City. In the event that it does not, the City shall pay to the Seller, upon ten (10) days' notice to the City, the cost to return the Property to its original condition. The City shall indemnify, defend and hold Seller harmless from and against any and all costs, liabilities, claims, liens encumbrances or causes of actions arising out of the City's actions

on the Property. This indemnification shall survive the Closing or the termination of this Purchase Agreement. The City shall have until before the expiration of the Due Diligence Period to provide written objections to Seller regarding the physical and/or environmental condition of the Property (“**Condition Objection Notice**”), which objections shall be reasonable. In the event that the City does not make a timely Condition Objection Notice, it shall be deemed to have waived its right to object to the physical and environmental condition of the Property. In the event that the City provides a timely Condition Objection Notice, the City and Seller shall reasonably cooperate with each other for a period of ten (10) business days to agree on any repairs or remediation efforts that have been requested by the City. If the Parties cannot agree on such repairs or remediation efforts during this time period, the City shall have the right to terminate the Purchase Agreement without penalty.

7. **Operation Prior to Closing.** During the period from the Effective Date to the Closing Date, Seller shall, at his expense, operate and maintain the Property in the ordinary course of business in accordance with prudent, reasonable business standards and will not enter into or consent to any agreement, contract, lease or other obligation regarding the Property without the City’s prior written consent. Seller shall not enter into or amend any contract or agreement affecting the Property that will be binding upon the City or the Property after the Closing without the City’s prior, written consent. Seller shall cooperate in good faith with the City and assist the City in obtaining any governmental approvals relating to its proposed use of the Property, promptly execute and return to the City an application and other documentation reasonably necessary to obtain any such approvals, and will promptly give written notice to the City upon Seller obtaining knowledge of any of Seller’s representations or warranties in this Agreement becoming untrue or inaccurate. Seller shall not take any action or fail to take any action that would result in any of Seller’s representations or warranties under this Agreement becoming untrue or inaccurate.

8. **Seller’s Representations and Warranties.** Seller represents and warrants to Buyer as of the Effective Date and the Closing Date as follows:

a. **Title to Property.** Seller owns the Property free and clear of all encumbrances, except for the Permitted Exceptions.

b. **Pending Proceedings.** To the best of Seller’s knowledge, there is no litigation, suit, arbitration, mediation, proceeding, claim or investigation (including, without limitation, environmental) pending or, to the best of Seller’s knowledge, threatened against Seller or relating to any aspect of the Property which might create or result in a lien on, or otherwise have a material adverse impact on, the Property or any part thereof or interest therein.

c. **Authority.** Seller has full power and authority to enter into this Purchase Agreement and incur and perform its obligations hereunder.

d. **Non-Foreign Status.** Seller is not a “foreign person” within the meaning of Paragraph 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

e. **Other Documents.** Neither the execution nor delivery of this Purchase Agreement nor the consummation of the transactions contemplated hereby (i) will result in any breach or violation of, or default under, any judgment, decree, order, mortgage, lease,

agreement, indenture or other instrument or document of which Seller is a party or by which the Property is bound, (ii) cause or entitle any person or entity to have a right to accelerate or declare a default under any oral or written agreement to which Seller is a party or which affects the Property; and/or (iii) violate any provision of any municipal, state or federal law, statutory or otherwise, to which Seller and/or the Property are or may be subject.

f. **Special Assessments.** Seller has not received any notice from any governmental authority as to pending or proposed special assessments, except for those set forth in the Special Assessment Agreement.

g. **Well; Septic.** Seller represents that all wells and the septic systems, if any exist, that are located on the Property comply with all applicable laws and regulations. Seller agrees to provide any and all certifications which may be necessary as part of the Closing process.

h. **Unpaid Labor and Materials.** Seller represents and warrants that Seller is not indebted for labor or material that might give rise to the filing of notice of mechanic's lien against the Property.

i. **Outstanding Property Agreements.** Seller represents that at the time of Closing, there will be no outstanding property agreements (lawn maintenance, snow removal, etc.) affecting the Property.

j. **Persons in Possession.** There are no entities or persons in possession of any portion of the Property other than pursuant to a recorded document.

k. **No Contracts.** No other party has a right to purchase the Property. Between the Effective Date and the Closing Date, no part of the Property will be alienated, encumbered or transferred except as contemplated by this Agreement. There are no contracts related to the development or improvement of the Property in place that would be in any way binding upon or enforceable against the City from and after the Closing.

l. **Violations.** The Property has been and is in compliance in all material respects with all applicable federal, state and local laws, rules ordinances, regulations and restrictions. There is not pending or threatened, from any federal, state, or local authority any notice, suit or judgment relating to any violation at the Property; and there is no condition existing with respect to the Property that violates any statute, ordinance, law or code regarding zoning, building, fire, air-pollution, or health law.

m. **Environmental Conditions.** To the best of Seller's knowledge, the Property is free of "contamination" from (A) any "hazardous waste," any "hazardous substance," and any "oil, petroleum products, and their by-products," as such terms are defined by any federal, state, county or local law, ordinance, regulation or requirement applicable to any portion of the Property, as the same may be amended from time to time, and including any regulations promulgated thereunder, and (B) any substance the presence of which on the Property is regulated or prohibited by any law (collectively, "**Hazardous Substances**"). "**Contamination**" means the presence of any Hazardous Substances at the

Property or arising from the Property that may require notification, assessment, remediation or cleanup under any applicable law or that may materially affect the value or use of the Property. Seller has not used or disposed of any Hazardous Substances on, from or affecting the Property in any manner, and to the best of Seller's knowledge, no prior owner or user of the Property has used or disposed of such substances on, from, or affecting the Property in any manner. There is not now, and to the best of Seller's knowledge, nor has there ever been on or in the Property underground storage tanks or surface impoundments, leach fields, asbestos-containing materials, or any spills of polychlorinated biphenyls, including those used in hydraulic oils, electric transformers or other equipment.

n. **Restrictions.** There are no unrecorded restrictions or encumbrances existing or alleged relating to the Property known to Seller.

Each of the foregoing representations shall be deemed remade as of the Closing date (with such changes thereto as Seller shall notify the City as of the Closing) and, as so remade, shall survive the Closing, delivery of the deed and other documents contemplated hereby, and any investigation by or on behalf of either party; provided that such representations shall lapse unless suit is brought with respect thereto within six (6) months after the Closing date.

9. **City's Contingencies.**

a. **Representations and Warranties.** All of Seller's representations and warranties contained in this Agreement must be materially true now and on the Closing Date as if made on the Closing date.

b. **Performance of Seller's Obligations.** Seller shall have performed all of the obligations required to be performed by Seller as and when required by this Agreement.

c. **Investigation.** The City shall have determined, on or before the Closing Date, that it is satisfied with the results of and matters disclosed during the Due Diligence Period.

d. **Property Condition.** The City shall have determined, on or before the Closing Date, that it is satisfied with the physical condition of the Property.

e. **Governmental Approvals.** The City shall have obtained all final governmental approvals and permits required to subdivide the Property from the remainder of Parcel Number 52.500.0030 and for the City's intended use of the Property, which are necessary in the City's sole judgment for its intended use of the Property.

f. **Partial Release of Mortgage.** The City shall have determined, on or before the Closing Date, that the Property has been released from the Mortgage and the City will incur no liability or obligations of any kind under the Mortgage after Closing or as a result of purchasing the Property from Seller.

10. **Closing.**

a. **Timing.** The closing of the purchase and sale of the Property contemplated by

this Agreement (the “**Closing**”) shall occur on a date within twenty (20) days following the City’s written notice to Seller of the City’s readiness to close, but no later than the date that is twelve (12) months after the Effective Date (the “**Closing Date**”). The Closing shall take place at the offices of a mutually agreeable title company (the “**Title Company**”); provided, however, that in lieu of personal attendance at Closing, provide to the Title Company written closing instructions, along with delivery to the Title Company of all closing documents required to be delivered by the Party in accordance with the terms of this Agreement. Seller agrees to deliver possession of the Property to the City on the Closing Date, subject only to the Permitted Encumbrances.

b. Seller’s Closing Documents. On the Closing Date, Seller shall execute and/or deliver to Buyer all of the following (collectively, “**Seller’s Closing Documents**”):

(1) **Deed.** A Warranty Deed (the “**Deed**”) conveying the Property to the City shall be free and clear of all liens, restrictions and encumbrances except for the following:

- (A) Local, state and federal rules and regulations;
- (B) Easements and restrictions of record; and
- (C) Those exceptions listed in the Title Commitment and not objected to or waived by City pursuant to section 5(c) above.

The above exceptions shall be referred to as “**Permitted Exceptions.**”

(2) **Seller’s Affidavit.** An Affidavit of Title by Seller indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving Seller or the Property; that there has been no skill, labor or material furnished to the Property for which payment has not been made or for which mechanics’ liens could be filed; and that there are no other unrecorded interests in the Property, together with whatever standard owner’s affidavit and/or indemnity (ALTA Form) which may be required by the Title Company to issue the Owner’s Policy of Title Insurance with the standard exceptions waived.

(3) **FIRPTA Affidavit.** A non-foreign affidavit, properly executed and in recordable form, containing such information as is required by IRC Section 1445(b)(2) and its regulations.

(4) **Mortgage Release.** A partial release of the Mortgage executed by Seller and Lender in recordable form.

(5) **Transfer Documents.** Any and all certificates, affidavits, real estate transfer returns or other documents required of the Seller under Minnesota law for transfer of the Property to the City.

c. Miscellaneous Closing Documents. The City and Seller shall each execute

any and all other documents reasonably requested by the other Party, or the Title Company, to complete the transfer of title from Seller to the City pursuant to this Agreement.

d. Closing Costs. The City will pay the closing fee charged by the Title Company for its services, the cost of the Title Commitment, the cost of the Owner's policy of title insurance should the City choose to purchase title insurance, and any recording fees which are payable to the county for the recording of the deed. Notwithstanding the foregoing, Seller shall be responsible for paying the State deed tax costs and conservation fee payable for the deed which results from the transfer of the Property.

11. Default and Remedies.

a. Default by Seller. If Seller defaults on any term or provision of this Purchase Agreement, the City shall notify Seller, in writing, of such default and Seller shall have ten (10) business days to cure such default. In the event that Seller does not cure its default within such time period, the City's remedies shall be specifically limited to the right to (a) terminate this Purchase Agreement without penalty, (b) waive any default and proceed to Closing or (c) seek specific performance.

b. Default by the City. If the City defaults on any term or provision of this Purchase Agreement, Seller shall notify the City, in writing, of such default and the City shall have ten (10) business days to cure such default. In the event that the City's default is not cured within such period, Seller shall have the right to terminate this Purchase Agreement. Nevertheless, if the City fails to complete the purchase of the Property by the date of Closing by reason of any default of the City, Seller shall be immediately released from its obligation to sell the Property to the City and the Purchase Agreement may be terminated by the Seller.

12. Notice. Any notice under this Purchase Agreement shall be in writing and be deemed served when it is delivered by personal delivery or by certified mail return receipt requested, addressed to the Parties at the following addresses:

Seller: Richard and Paige Malloy
310 W Cannon St.
Cannon Falls, MN 55009

City: City of Cannon Falls
918 River Falls Road
Cannon Falls, MN 55009

13. General Provisions.

a. Governing Law. This Purchase Agreement shall be governed by the laws of the State of Minnesota.

b. Entire Agreement. This Purchase Agreement constitutes the entire understanding between the Parties with regard to the purchase of the Property by the City. It may be amended or modified only in a writing signed by both Parties. This Purchase

Agreement shall not be construed more strictly against one party than the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties.

c. **Waivers.** Neither the extension of time or payment of any sum of money to be paid hereunder nor any waiver by either Party of its right to declare this Purchase Agreement forfeited by reasons of any breach hereof, shall in any manner affect the right of either Party to terminate this Purchase Agreement because of a subsequent default. No extension of time or waiver shall be effective unless given in writing signed by the non-breaching Party.

d. **Additional Documents.** After the Closing, each of the Parties, without further consideration, agrees to execute such additional documents as may reasonably be necessary to carry out the purposes and intent of this Purchase Agreement and to fulfill the obligations of the respective Parties hereunder.

e. **Commissions.** Seller hereby warrants to the City and the City hereby warrants to Seller that no broker, agent or finder has been retained by either Party and that no broker's commissions, finder's fees or like charges have been incurred in connection with this transaction. Each Party hereby indemnifies and agrees to hold harmless the other from and against all losses, damages, costs, expenses (including reasonable fees and expenses of attorneys), causes of action, suits or judgments of any nature arising out of any claim, demand or liability to or asserted by any broker, agent or finder, other than herein specified, claiming to have acted on behalf of the indemnifying party in connection with this transaction.

f. **Headings.** The headings in this Purchase Agreement are inserted for convenience only and shall not constitute a part hereof.

g. **Assignments.** Neither Party may assign this Agreement without the prior written consent of the other Party. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

h. **Time.** Time shall be of the essence hereof.

i. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

[Signature Page to Follow]

Seller and the City have executed this Agreement as of the Effective Date.

CITY:

City of Cannon Falls

By: _____
Matt Montgomery, Mayor

By: _____
Neil Jensen, City Administrator

SELLER:

Richard Malloy and Paige Malloy

By: 
Richard Malloy

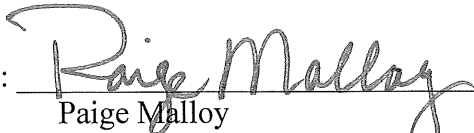
By: 
Paige Malloy

EXHIBIT A

That part of Government Lot 12 in Section 7, Township 112 North, Range 17 West, Goodhue County, Minnesota, described as follows:

Commencing 150.00 feet east of the intersection of the east right-of-way line of North 4th Street in the City of Cannon Falls on the south line of said Section 7; thence South 89 degrees 49 minutes 25 seconds East, 90.00 feet to the Point of Beginning; thence North 14 degrees 57 minutes 15 seconds East, 146.83 feet; thence South 89 degrees 49 minutes 25 seconds East, 20.00 feet to the west right-of-way line of North 3rd Street; thence South 00 degrees 51 minutes 09 seconds East, along said west right-of-way line, 142.00 feet to a point on said south line; thence North 89 degrees 49 minutes 25 seconds West, along said south line, 60.00 feet to the Point of Beginning.

Containing 0.14 acres, more or less and subject to any easements and restrictions of record.