

RESOLUTION NO. 29-95A RESOLUTION APPROVING THE CITY OF BUFFALO'S
OFFER TO PURCHASE CERTAIN REAL ESTATE WITHIN
THE CITY OF BUFFALO

WHEREAS, the City of Buffalo, Iowa desires to purchase certain real property within the city limits owned by Danny and Linda Mullanack, acting pursuant to the City's municipal powers in administering its Voluntary Flood Recovery Program project, and

WHEREAS, the property in question is known as 104 and 106 Franklin Street in the City of Buffalo, Iowa, and is more particularly described as the South 83 feet of Lots 5 and 6, Block 3 of Heckle & Kautz's Addition to Buffalo, Iowa, and

WHEREAS, the City of Buffalo's written offer to purchase the above-specified property, which is entitled "Voluntary Acquisition Program for Flood-Damaged Residence Offer to Buy Real Estate and Acceptance," is attached and incorporated as Resolution Exhibit A, and

WHEREAS, the City Council of the City of Buffalo, Iowa finds the proposed purchase of said real estate to be in the best interest of the citizens of Buffalo,

IT IS, THEREFORE, RESOLVED that the proposed purchase of the above-described property by the City of Buffalo, Iowa, for the sum of \$19,943 and subject to the purchase price adjustments set forth in attached Exhibit A, and subject to the other terms and conditions set forth in Exhibit A, is hereby approved. The appropriate officers of the City are authorized and directed to execute such documents as are necessary to consummate the transaction.

ADOPTED by the City Council of the City of Buffalo, Iowa, this 05 day of June, 1995.

05 APPROVED AND SIGNED by the Mayor of Buffalo, Iowa, this day of June, 1995.

CITY OF BUFFALO, IOWA

By 
Phil C. Hoover, Mayor

ATTEST:


Carol Bernauer, City Clerk

McDONALD, STONEBRAKER & CEPICAN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW
JERSEY RIDGE OFFICE CENTER
3432 JERSEY RIDGE ROAD
DAVENPORT, IOWA

ELLIOTT R. McDONALD 1904-1974
ELLIOTT R. (JACK) McDONALD, JR.*
JOHN D. STONEBRAKER
PATRICIA RHODES CEPICAN
ELLIOTT R. (SCOTT) McDONALD III*
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JOSEPH C. GREEN*

Telephone
(319) 355-6478

Mailing Address
P.O. Box 2746
Davenport, IA 52809

FAX (319) 355-1354

June 5, 1995

* Licensed in Iowa and Illinois

VIA FAX AND U. S. MAIL

City of Buffalo
Buffalo City Hall
409 Third Street
P. O. Box 557
Buffalo, IA 52728

Post-It™ brand fax transmittal memo 7671 # of pages 2

| | | | |
|-------|-----------------|---------|------------|
| To | Mayor's Council | From | Mark Cleve |
| City | City of Buffalo | Co. | |
| Dept. | | Phone # | 355-6478 |
| Fax # | 381-4759 | Fax # | 355-1354 |

Attention: Mayor Phil C. Hoover and City Council Members

Re: Bi-State - Mullanack Offer to Purchase
Our file 24472

Dear Mayor Hoover
and City Council Members:

As requested, I have enclosed a resolution regarding the City's offer to purchase the Mullanack property. Please physically attach the recently revised offer to purchase as Exhibit A, as set forth in the resolution. Should you have any questions on this matter, please feel welcome to contact me.

Very truly yours,

MCDONALD, STONEBRAKER & CEPICAN, P.C.


Mark D. Cleve

MDC/lid

Enclosure

McDONALD, STONEBRAKER & CEPICAN

A PROFESSIONAL CORPORATION

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Davenport, IA 52809

May 31, 1995

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* Licensed in Iowa and Illinois

VIA FAX AND U. S. MAIL

City of Buffalo
Buffalo City Hall
409 Third Street
P. O. Box 557
Buffalo, IA 52728

| | | | |
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| Co. | | Co. | |
| Dept. | Mayor + Council | Phone # | 355-6478 |
| Fax # | 381-4759 | Fax # | 355-1354 |

Attention: Mayor Phil C. Hoover and City Council Members

Re: Bi-State - Mullanack Offer to Purchase
Our file 24472

Dear Mayor Hoover
and City Council Members:

You should have already received a copy of the revised contract from Deb Capaldo, along with a letter from her dated May 30, 1995, which specifies the changes to be made in the contract. For your ease of reference, I have enclosed a copy of that letter. These are changes which I proposed on the City's behalf, and which were acceptable to Bi-State.

We are now in a position where you may put this on the agenda and approve it at the regularly scheduled June meeting. Per Buffalo City Code Section 1-3.0301(5), this agreement should be approved by the Council, preferably by resolution. Per City Code Section 1-3.0102(7), the contract may be signed by the Mayor.

Should you have any questions or comments on any of these matters, please feel welcome to contact me. I will be out of town trying a case on Thursday, June 1 - Friday, June 2, but will be back in the office on Monday, June 5.

Very truly yours,

McDONALD, STONEBRAKER & CEPICAN, P.C.

Mark D. Cleve

MDC/ld

Enclosure



1504 Third Avenue, P.O. Box 3368
 Rock Island, Illinois 61204-3368
 Phone (309) 793-6300 • Fax (309) 793-6305

May 30, 1995

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VICE-CHAIR
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SECRETARY
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 Thomas A. Wilson, Social Services

Executive Director
 Gary B. Vallem

Mr. Phil C. Hoover
 Mayor of Buffalo
 409 Third Street
 P.O. Box 557
 Buffalo, Iowa 52728

Dear Mayor Hoover:

Enclosed is the revised Offer to Buy Agreement for the Mullanack property. The revisions are a result of discussions between Mark Cleve, City Attorney, and me. Any changes were approved, as required, by Iowa Division of Emergency Management.

Following are the changes to the Agreement:

- Page 2, Paragraph 3. DEED:

1) Date of December 1, 1995 was added as a maximum closing date. The intent is to hold the closing at the earliest opportunity.

2) New last sentences added:

"This agreement is contingent upon the relocation of the tenants on or before December 1, 1995. The closing shall be held as soon as practicable after the relocation of the tenants residing at this property has been accomplished."

- Page 3, Paragraph 10. INSURANCE:

1) Word "closing" replaces "termination of occupancy". The change ensures continuation of insurance coverage until closing.

- Page 6, Paragraph 22. OFFER:

1) New wording - "This offer shall become null and void unless accepted by the seller within ten (10) days after the seller is presented with the offer."

If you are in agreement with the offer, please sign and return it to me. I will then present it to the Mullanacks' with a cover letter.

Please contact me at (309) 793-6300, if you have any questions.

Sincerely,

Debra Capaldo
 Housing Recovery Coordinator

DC/lam
 27C-87

Enclosure: Offer To Buy Agreement

cc: Mark Cleve, City of Buffalo Attorney



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Serving local governments in Muscatine and Scott Counties, Iowa;
 Henry, Mercer and Rock Island Counties, Illinois.



**VOLUNTARY ACQUISITION PROGRAM
FOR FLOOD-DAMAGED RESIDENCE
OFFER TO BUY REAL ESTATE AND ACCEPTANCE**

TO: Danny and Linda Mullanack, herein designated as "Seller".

The City of Buffalo, a municipal corporation of the State of Iowa (herein referred to as the "City"), acting pursuant to this municipal powers in administering its Voluntary Flood Recovery Program Project does hereby offer to buy all the Seller's right, title and interest in the Scott County, Iowa real estate locally known as 104 and 106 Franklin Street and legally described as follows:

Heckle & Kautz's Addition South 83 ft. of Lots 5 & 6 Block 3;

together with all the Seller's right, title and interest in all Fixtures, Buildings and improvements located on the above-described real estate, free and clear of all liens, encumbrances, reservations, exceptions and modifications. The entirety of the above-described interests being conveyed shall hereinafter be referred to as the "Property". The Property shall be conveyed with good, clear, merchantable title, subject to easements of record for public utilities. For the purposes of this document, said Fixtures include all personal property that integrally belongs to or is part of the above-described real estate, whether attached or detached, such as light fixtures (including fluorescence tubes but not mazda bulbs), awnings, storm windows, storm doors, storm sashes, screens, attached linoleum, plumbing fixtures, water heaters, water softeners, automatic heating equipment, air conditioning equipment other than window type, door chimes, built-in-items, and electrical service cable, fencing, gates and other attached fixtures, trees, bushes, shrubs and plants unless specifically exempted.

In consideration of the covenants and obligations contained herein, the parties agree as follows:

1. **PURCHASE PRICE.** The City offers to purchase all the Seller's right, title and interest in Property for \$19,943 payable at Closing, which sum shall be reduced by any amount paid by the City or others on behalf of or to the Seller for the proposes set forth in paragraph 8A. The Seller shall receive no other compensation from the City for the Seller's right, title and interest in the Property.
2. **ABSTRACT AND TITLE.** Seller shall promptly deliver to the City for examination an abstract of title for the Property, continued to a date subsequent to the date of this offer, prepared pursuant to Iowa Code Sections 614.29 through 614.38, Iowa Land Title Association Abstracting Standards, and Iowa Land Title Examination Standards of the Iowa State Bar Association. The abstract shall begin with the government patent to the Property and show merchantable title in Seller. The cost of the continuance of an existing abstract shall be paid by the City. In the event that the Seller is unable to deliver an existing abstract to the City, the costs of creating a new 40-year abstract shall be paid by the City.

The Seller shall pay all costs required to perfect its title to the Property and shall pay the costs of any additional abstracting and/or title work due to acts or omissions of Seller, including transfers or death of Seller or assigns. The abstract shall become the property of the City when the Purchase Price is paid in full.

3. DEED. On or before December 1, 1995, or at such date as the parties may mutually agree (the "Closing Date"), the Seller shall have completed its obligations under paragraph 2 and paragraph 7 and the Seller shall execute and deliver to the City a Warranty Deed for the Property in recordable form (i.e., signed and acknowledged) conveying fee simple title to the Property to the City. The Seller shall further deliver to the City a declaration of value as required under Section 428A.1 of the Code of Iowa, and a groundwater hazard statement as required under Section 558.69 of the Code. The Deed shall be on the General Warranty Deed form approved by the Iowa State Bar Association. This Agreement is contingent upon the relocation of the tenants on or before December 1, 1995. The closing shall be held as soon as practicable after the relocation of the tenants residing at this property has been accomplished.
4. FOR THE SELLERS: JOINT TENANCY IN PROCEEDS. If, and only if, the Sellers, immediately preceding this offer, hold the title to the Property in joint tenancy, and such joint tenancy is not later destroyed by operation of a law or by acts of the Sellers (1) then the proceeds of this sale shall be and continue in Sellers as joint tenants with rights of survivorship and not as tenants in common; and (2) City, in the event of death of either Seller, agrees to pay any balance of the proceeds of this sale to the surviving Seller and to accept Deed from such surviving Seller consistent with paragraph 2 above.
5. POSSESSION. On and after the Closing Date, the City shall be entitled to immediate possession of the Property and to receipt of all rents and profits from the Property due thereafter.
6. INSPECTION OF THE PROPERTY. The City, at its expense, shall have the right to conduct such investigations, inspections and inventories of the Property as it deems reasonable or necessary prior to Closing. The Seller hereby grants the City, its officers, agents, employees and independent contractors, the right to enter upon the Property at reasonable times upon reasonable notice, oral or written from time to time after the date of this Offer for the purposes of investigating, inspecting and performing inventories of the Property and for other purposes and inventories by the City, regardless of the outcome thereof, shall not affect Seller's representation or warranties set forth in paragraph 19.
7. REMOVAL OF PERSONAL PROPERTY AND DEBRIS. Prior to the Closing Date, Seller at its own expense shall remove all personal property, equipment and debris from the Property, including but not limited to vehicles, vehicle parts, appliances, storage containers, household cleaners and solvents, construction materials, firewood, etc.

8. APPLICATION OF PURCHASE PRICE, DEDUCTIONS FOR FLOOD ASSISTANCE RECEIVED.

- A. Prior to disbursing payment to the Seller, the City may use a portion of the Purchase Price to satisfy the Seller's obligations under this document to remove personal property and debris and to pay taxes, assessments, liens, acquisition of other parties' outstanding interest in the Property, abstracting, recording fees and other costs incidental to the conveyance by Seller of merchantable title to the City.
- B. Seller acknowledges that this voluntary acquisition is made pursuant to a program funded by the Federal Emergency Management Agency (FEMA) and U.S. Department of Housing and Urban Development (HUD). In order to prevent the duplication of Federal Assistance made to flood disaster victims, HUD and FEMA require that certain types of assistance received by the seller from State, Federal, and private sources for flood-related damage be deducted in determining the Purchase Price.

9. RELOCATION OUTSIDE FLOODPLAIN. The Seller acknowledges that it is required to relocate outside of National Flood Insurance Program (NFIP) Zone A floodplain boundaries.

10. INSURANCE. Seller shall maintain and keep in force and effect all existing property and liability insurance until closing.

11. STATUS QUO MAINTAINED. The property shall be preserved in its present condition and Seller shall deliver it intact at the time possession to the City is given. All risk of loss or damage to the property is on Seller until the City takes possession. Prior to possession by the City, Seller shall promptly give written notice to the City of any loss or damage to the Property. In the event of loss, damage or destruction of all or part of the Property, the City shall have the option to terminate this Agreement effective immediately. However in the case of loss, damage or destruction of all or part of the Property from causes covered by insurance, the City shall have the option to either: (1) take possession of the Property and accept an assignment of all Seller's right, title and interest in and to any claims Seller has under the insurance policies covering the Property, or (2) terminate this Agreement effective immediately.

12. UTILITIES. The Seller shall be responsible for payment of all utility expenses incurred by it or incurred by any other occupants, prior to the termination of occupancy, including without limitation of the foregoing sewer, solid waste, and water charges which may be assessed for collection pursuant to Iowa Code Section 384.84.

13. TAXES. Seller shall pay a pro-rata share of taxes on the Property (real and personal) for the fiscal year (July 1 - June 30) of Closing, and all unpaid taxes for prior years. To determine the pro-rata share of taxes for current fiscal year, payable in the next fiscal year, the following procedure shall be used:

- A. The annual tax payment shown on the most recent tax figure for the property shall be divided by twelve to determine the amount of tax owed for each month.

- B. The total number of months in the current fiscal year commencing with the first day of July and ending with the Closing Date shall be determined and said number multiplied by the monthly amount of tax owed and that figure shall be the portion of taxes to be paid by the Seller on the pro-rata basis.
- C. When the Closing Date is on or before the 15th of the month, no taxes will be due for that month. When the Closing Date is after the 15th of the month, a full month's taxes shall be due for that month and shall be added to the Seller's pro-rata share.
14. SPECIAL ASSESSMENTS. Seller shall pay in full all special assessments on the Property which have been certified to the County Treasurer for collection date before the Closing Date.
15. TIME IS OF THE ESSENCE. Time is of the essence of this agreement.
16. LEASES. Seller represents and warrants to the City that there are no leases, will be no tenancies at time of closing, or other rights of occupancy for use for any portion of the Property. The foregoing representation and warranty shall survive Closing Date. Seller shall hold harmless and indemnify the City for and against any claims which may arise or be based upon any alleged leasehold interest, tenancy, or other right of occupancy or use for any portion for the Property.
17. APPROVAL OF COURT. If the property is an asset of any estate, trust or guardianship, this document shall be subject to Court approval prior to payment of Purchase Price, unless declared unnecessary by the City's legal departments. If Court approval is necessary, the appropriate fiduciary shall proceed promptly and diligently to bring the matter on for hearing to enable the issuance of a Court Officer's Deed.
18. ENVIRONMENTAL MATTERS. The Seller hereby represents and warrants to the City that:
- A. Environmental Representations and Warranties.
- (1) There are no abandoned wells, agricultural drainage wells, solid waste disposal sites or underground storage tanks (as defined in Iowa Code Chapter 455 B) located in, on or about the Property;
 - (2) There is and has been no hazardous waste stored, generated, treated, transported, installed, dumped, handled or placed in, on or about the Property.
 - (3) At no time has any Federal or State hazardous waste clean up funds been expended with respect to any of the Property;
 - (4) There has never been any solid waste disposal site or underground storage tank located in, on or about the Property, nor has there been any releases from an underground

storage tank on real property contiguous to the Property which has resulted in any hazardous substance coming in contact with the Property.

- (5) The Seller has not received any directive, citation, notice, letter or other communication, whether written or oral, from the Environmental Protection Agency, the Iowa Department of Natural Resources, any other governmental agency with authority under any Environmental Laws, or any other person or entity regarding the release, disposal, discharge, or presence of any hazardous waste on the Property, or any violation of any Environmental Laws; and
- (6) To the best of the Seller's knowledge, neither the Property, nor the real property contiguous to the property, nor the predecessors in title to the Property, are in violation of or subject to an existing, pending or threatened investigation or inquiry by any governmental authority or to any removal or remedial obligations under any Environmental Laws.

The foregoing representations and warranties, and the Environmental Indemnifications set forth in the following subparagraph B shall survive the Closing. In addition, the foregoing representations and warranties and the indemnification provisions in this Offer to Buy shall not be affected by any study, investigation, or inspection of the property by the City or the City's agents.

B. Environmental Indemnification.

The Seller agrees to indemnify and hold harmless the City from and against any and all claims, demands, fines, penalties, causes of action, losses, damage, liabilities, expenses and costs (including court costs and reasonable attorney's fees - which may include the value of services provided by the City's legal department - incurred by the City to enforce this provision), asserted against or incurred by the City by reason of or arising out of the breach of any representation or warranty of the Seller set forth above.

C. Additional Environmental Provisions.

The Seller shall not store, generate, treat, transport, install, dump, handle, or place in, on or about any portion of the property any hazardous waste or hazardous substance. If the Seller receives any notice from any governmental authority or any other party regarding the release or presence of any hazardous waste or hazardous substance on any portion of the property, the Seller shall immediately notify the City of such fact. In addition, the City or its agents shall have the right to enter upon the property at any time to perform additional environmental studies. If at any time the City in its sole and irrevocable discretion determines that hazardous waste or hazardous substances are present on any portion of the property, the City may terminate this Offer to Buy effective immediately.

19. CONTRACT BINDING ON SUCCESSORS IN INTEREST. The document shall apply to and bind the heirs, executors, administrators, partners, assigns and successors in interest of the respective parties.
20. INTENTION OF USE OF WORDS AND PHRASES. Words and phrases contained herein, including the acknowledgement clause, shall be construed as in the singular and plural number, and as masculine, feminine or neuter gender, according to the context.
21. VOLUNTARY ACQUISITION. The Seller, as owner of the property, which has been substantially damaged as result of flooding which has been declared a Presidentially-declared disaster, acknowledges that the City has presented this Offer for the Property pursuant to the City's Voluntary Acquisition Program of Residences and the Seller's acceptance of this Offer is a voluntary acquisition. Seller is under no duress or coercive action by the City to accept this offer and the City will not pursue acquisition of this Property by eminent domain or other means if the Seller declines to accept this Offer. The Seller further acknowledges that if it accepts this Offer, it will be necessary to move permanently from the Property.
22. OFFER. This Offer shall become null and void unless accepted by the Seller within ten (10) days after the seller is presented with the offer.

This Offer is presented to the Seller on this 05 day of JUNE, 1995.

By: 
 Authorized Representative

The foregoing Offer is accepted by the undersigned Seller this _____ day of _____, 1995.

By: _____
 Homeowner

By: _____
 Homeowner

Official City Approval:

The foregoing contract was approved and authorized by the City of Buffalo on _____ day of _____, 1995.

 Mayor, City of Buffalo, Iowa

Attest: _____
 Notary