



Request for Council Action

TO: Mayor and City Council
FROM: Tim Murray, City Administrator
MEETING DATE: April 9, 2019
SUBJECT: Resolution 2019-065 Authorizing Execution of a Purchase Agreement and Acquisition of Property (PID 18.30.1.25.002)

Background:

The proposed redevelopment of the former Public Works property, coupled with the need for additional secure impound storage space, requires the need for a replacement facility for the Police Department. The construction of a new impound storage building was included in the approved 2019 Budget and Capital Improvement Plan, with \$350,000.00 budgeted from Fund 437 (Public Facilities Fund). With the relocation of Faribault Foods to the Northern Industrial Park and other changes in their operations, they no longer have the need for their maintenance building located south of 20th Street NW, and have indicated they are willing to sell the building to the City.

The City Council discussed the acquisition of this building for Police Department impound storage needs as part of a closed session meeting on March 5, 2019. A sale price of \$250,000.00 was negotiated with Faribault Foods, and a Purchase Agreement for the acquisition was prepared and has been reviewed by the City Attorney as well as the seller's attorney. The agreement allows Faribault Foods time to remove equipment, materials, and other items they currently have stored in the building, with an expected closing date by the end of July.

Recommendation:

Approve Resolution 2019-065 and execute Purchase Agreement

Attachments:

- Resolution 2019-065
- Purchase Agreement
- Location Map

CITY OF FARIBAULT

RESOLUTION #2019-065

AUTHORIZING EXECUTION OF A PURCHASE AGREEMENT AND ACQUISITION OF PROPERTY (PID 18.30.1.25.002)

WHEREAS, Faribault Foods, Inc. (the "Seller") is the owner of real estate located east of 2nd Avenue NW and south of 20th Street NW in Faribault, Rice County, Minnesota, identified as PID 18.30.1.25.002, and which is legally described in the Agreement as hereinafter defined (the "Property"); and

WHEREAS, the City of Faribault (the "City") desires to purchase of the Property from the Seller; and

WHEREAS, the City has followed applicable statutory provisions and the City finds that the purchase of the Property will fulfill the objectives, goals and mission of the City; and

WHEREAS, the City has prepared a Purchase Agreement (the "Agreement") providing for the terms of the conveyance of the Property from the Seller to the City, with such Agreement being as set forth in Exhibit A and incorporated into and made a part of this Resolution.

NOW, THEREFORE BE IT RESOLVED, that the recitals set forth in this Resolution are incorporated into and made a part of this Resolution.

ALSO, BE IT RESOLVED, that the purchase of the Property by the City is hereby approved in the amount of \$250,000.00 pursuant to the terms of the Agreement, which is also approved in substantially the form presented to the City Council on this date, subject to modifications that do not materially alter the City's rights and obligations under the Agreement and that are approved by the City's Mayor and City Administrator, which approvals shall be conclusively evidenced by execution of the Agreement.

ALSO, BE IT RESOLVED, that the Mayor and the City Administrator of the City are hereby authorized and directed to execute all appropriate documents, including but not limited to the Agreement, to effectuate the transaction contemplated by this Resolution.

ALSO, BE IT RESOLVED, that the Mayor, City Administrator, staff and consultants are hereby authorized and directed to take any and all additional steps and actions necessary or convenient in order to accomplish the intent of this Resolution.

Date Adopted: April 9, 2019

Faribault City Council

Kevin F. Voracek, Mayor

ATTEST:

Timothy C. Murray, City Administrator

PURCHASE AGREEMENT

Faribault, Minnesota
April ____, 2019 (“Effective Date”)

IN CONSIDERATION OF THE MUTUAL COVENANTS, DUTIES, AND OBLIGATIONS CONTAINED HEREIN, the City of Faribault, a Minnesota municipal corporation under the laws of the State of Minnesota, whose business address is 208 1st Avenue NW, Faribault, MN 55021, (“Buyer”) and Faribault Foods, Inc., f/k/a The Faribault Canning Company, whose business address is 222 South Ninth Street, Suite 3380, Minneapolis, MN 55402 (“Seller”), agree to the following Purchase Agreement (“Agreement”).

THE CONDITIONS AND TERMS OF THIS PURCHASE AGREEMENT INCLUDE THE FOLLOWING:

1. **SUBJECT PROPERTY:** The Seller is the owner of certain real estate (the “Property”) with a parcel identification number of 18.30.1.25.002 located in the City of Faribault, Rice County, Minnesota, legally described on the attached Exhibit A, which legal description shall be confirmed by the Title Company (as hereinafter defined).
2. **OFFER/ACCEPTANCE:** In consideration of the mutual agreements herein contained, Buyer offers and agrees to purchase and Seller agrees to sell and convey the Property, pursuant to the terms of this Agreement.
3. **PURCHASE PRICE AND TERMS:**
 - A. **PURCHASE PRICE.** The purchase price (the “Purchase Price”) for the Property shall be Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) payable as follows:
 1. **Earnest Money.** Within fourteen (14) days after the Effective Date, Seller shall deposit Twenty Thousand and No/100 Dollars (\$20,000.00) earnest money (the “Earnest Money”) with Knight Barry Title Group located at 306 NW First Avenue, Faribault MN 55021 (the “Title Company”), in accordance with the terms of this Agreement and deposited by the Title Company in an interest-bearing account, with all interest earned to be payable (i) to Buyer upon the closing and applied toward the Purchase Price or upon termination of this Agreement by either Seller or Buyer for reasons other than Buyer’s default, or (ii) to Seller in the event of termination of this Agreement due to Buyer’s default.
 2. **Payment at Closing.** At the consummation of the transaction contemplated by this Agreement (the “Closing”), Buyer shall deliver to Title Company cash in an amount equal to the Purchase Price less the Earnest Money plus interest earned. The Purchase Price, subject to adjustments and apportionments as set forth herein, shall be paid at Closing by wire transfer

of immediately available federal funds, transferred to the order or account of Seller or such other person as Seller may designate in writing.

B. DOCUMENTS TO BE DELIVERED BY SELLER AT CLOSING. At Closing, Seller agrees to execute and shall deliver to Buyer:

1. Limited Warranty Deed, in recordable form, duly executed by Seller.
2. Standard form affidavit of Seller showing no bankruptcies, judgments or mechanics' liens affecting the Property.
3. Certificate that Seller is not a foreign national.
4. Well disclosure certificate, if required, or, if there is no well on the Property, the Limited Warranty Deed must include the following statement: "The Seller certifies that the seller does not know of any wells on the described real property."
5. Any other documents reasonably required by the Title Company to evidence that title to the Property is marketable and that Seller has complied with the terms of this Agreement.
6. Certificate of Real Estate Value (CRV).

C. DOCUMENTS TO BE DELIVERED BY BUYER AT CLOSING. At Closing, Buyer shall deliver the following to Seller:

1. Any documents as may be reasonably required by the Title Company.
4. **DEED/MARKETABLE TITLE:** Subject to performance by Buyer, Seller agrees to execute and deliver at the time of closing a Limited Warranty Deed conveying marketable title to said Property in recordable form.
5. **POSSESSION:** Subject to the personal property and removal rights granted by Buyer to Seller, Seller agrees to deliver possession of the Property not later than the date of closing.
6. **COSTS AND PRORATIONS:** Seller and Buyer agree to the following prorations and allocations of costs regarding this Agreement:
 - A. Deed Tax. Seller shall pay all state deed tax regarding the Limited Warranty Deed and any other documents necessary to place record title in the condition warranted and to be delivered by Seller under this Agreement.
 - B. Taxes and Assessments. The real estate taxes due and payable in 2019 are commercial/industrial classification. The Seller and Buyer agree to prorate as of the date of actual closing all real estate taxes due and payable in the year of closing. Buyer shall pay the real estate taxes due and payable in the year following closing

and thereafter. The Seller makes no warranties as to the real estate tax classification status of the Property in the year following closing. Seller shall pay all special assessments due and payable as of the date of closing. Buyer shall pay all special assessments levied on said Property after the date of closing. Seller makes no representation or warranty whatsoever concerning the amount of real estate taxes or assessments which shall be assessed or levied against the Property subsequent to the date of this Agreement.

- C. Recording Costs. Seller shall pay the costs of recording all documents necessary to place record title in the condition warranted, and the Buyer shall pay the cost of recording all other documents.
- D. Closing Costs. Buyer and Seller shall each pay one-half of the closing fee charged by the Title Company.
- E. Legal Expenses. The Buyer and Seller shall each be responsible and pay their respective legal fees.
- F. Due Diligence Expenses. The Buyer shall pay for all expenses associated with Buyer's investigation of the Property, including, but not limited to, the cost of the Title Commitment, survey, environmental assessment and property inspection.

- 7. TITLE EXAMINATION/CURING TITLE DEFECTS:** As soon as reasonably possible after execution of this Agreement by both parties, Buyer shall request a current commitment for an ALTA Owner's Policy of Title Insurance issued by the Title Company ("Title Commitment"), a copy of which shall be provided to both Buyer and Seller. The Buyer shall have 20 days from the date it receives the Title Commitment to raise any objections to title it may have. Objections not made within such time will be deemed waived. The Seller shall have 90 days from the date of such objection to affect a cure; provided, however, that Seller shall have no obligation to cure any objections, and may inform Buyer of such. The Buyer may then elect to close notwithstanding the uncured objections or declare this Agreement null and void, and the parties will thereby be released from any further obligation hereunder.
- 8. DEFAULT:** If the title to the Property be found marketable or be so made within said time, and Buyer shall default in any of the covenants contained in this Agreement and continue into default for a period of ten (10) days, then and in that case, Seller may terminate this Agreement and on such termination all the payments made under this Agreement, including all Earnest Money, shall be retained by Seller as liquidated damages, time being of the essence hereof. This provision shall not deprive either party of the right of enforcing the specific performance of this Agreement provided this Agreement shall not be terminated as aforesaid, and provided action to enforce such specific performance shall be commenced within six months after such right of action shall arise.
- 9. DUE DILIGENCE INSPECTION:** Buyer shall have the right during a period commencing on the Effective Date and ending at 5:00 p.m. (CST) on the date that is thirty (30) days following the Effective Date (the "Due Diligence Period"), at its sole cost, expense and risk, to examine and inspect the Property and to conduct feasibility studies with regard to the ownership

and operation of the Property. Buyer may enter upon the Property to inspect the same, and may conduct tests and examinations. Buyer shall promptly restore the Property to substantially the same condition in which it existed immediately prior to any physical tests conducted by or on behalf of Buyer. Buyer holds Seller harmless from any damages, liabilities or claims caused by the negligence or wrongful act of Buyer, its employees, agents or contractors, in exercising its rights under this Section. Buyer shall have the right, at any time up to the expiration of the Due Diligence Period to terminate this Agreement by delivering written notice to Seller. In such event, this Purchase Agreement will be considered terminated and all Earnest Money, plus any accrued interest will be returned to the Buyer.

10. SELLER REPRESENTATIONS AND WARRANTIES: Seller makes the following representations and warranties to Buyer:

- a. Authority. Seller has full power and authority to enter into this Agreement and incur and perform its obligations hereunder.
- b. Non-Foreign Status. Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.
- c. Condemnation. To Seller’s current actual knowledge, there are no condemnation proceedings which are pending or threatened against all or any portion of the Property.
- d. Wells. To Seller’s current actual knowledge, there are no wells located on the Property.
- e. Sewage Treatment System. To Seller’s current actual knowledge, there is not a subsurface private sewage treatment system on the Property.
- f. Methamphetamine Production. To Seller’s current actual knowledge, no methamphetamine production has occurred on the Property.
- g. Underground Tanks. To Seller’s current actual knowledge, there are no underground tanks on the Property.

Except as expressly set forth in this Agreement, it is understood and agreed that Seller is not making, and has not at any time made, any representations or warranties of any kind or character, express or implied, with respect to the Property, including, but not limited to, any warranties or representations as to habitability, merchantability or fitness for a particular purpose. Buyer acknowledges and agrees that, upon Closing, except as expressly set forth herein, Seller shall sell and convey to Buyer, and Buyer shall accept from Seller, the Property **AS-IS, WHERE-IS, WITH ALL FAULTS**. Buyer has not relied, and will not rely on, and Seller is not liable for or bound by, any express or implied warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, any marketing or offering materials that may have been distributed with respect to the Property) made or furnished by Seller, the managers of the Property, or any real estate broker or agent representing the Property or purporting to represent Seller, whether made directly or indirectly, in writing or orally, unless specifically

set forth in this Agreement. Buyer acknowledges that the Purchase Price reflects an “AS IS” purchase. Buyer represents that, as of Closing, Buyer will have conducted any and all such investigations as Buyer may deem practical or necessary to satisfy Buyer as to the condition of the Property and the existence or nonexistence of any hazardous or toxic materials that may have been located on, or discharged on, the Property and Buyer will rely solely on its independent investigations and not upon any information which may have been provided by or on behalf of Seller or its agents. Buyer acknowledges that Seller is making no representations regarding the environmental condition of the Property and, following closing, Buyer shall hold Seller harmless from any action arising from the existence of hazardous materials on the Property. The provisions of this Section shall survive Closing or any other termination of this Agreement.

Notwithstanding the foregoing, each of the representations made in this Section shall be deemed remade as of the Closing Date (with such changes thereto as Seller shall notify Buyer 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

11. DAMAGE: If, prior to the Closing Date, all or any part of the Property is substantially damaged (to the extent that repairs are reasonably expected to exceed ten percent (10%) of the Purchase Price) by fire, casualty, the elements or any other cause, or if the loss is uninsured, then Seller will immediately give notice to Buyer, and Buyer will have the right to terminate this Agreement by giving notice within ten (10) days after Seller’s notice. In the event that Buyer terminates, all Earnest Money shall be refunded to Buyer. If Buyer fails to give the termination notice, Seller shall have the option to either (a) commence repairs or (b) at Closing, assign to Buyer all rights to insurance proceeds resulting from such event. In the event of damage to the Property by fire, casualty, the elements or other cause that does not rise to the level of “substantial” based on the definition above, Seller will repair such damage at its sole cost prior to Closing, and Closing may be extended up to sixty (60) days to permit such repair

12. TIME OF ESSENCE: Time is of the essence in this Agreement.

13. CLOSING DATE AND LOCATION: This Agreement for the sale of the above described Property shall be closed on or before July 31, 2019, or upon such other date agreed upon by the parties. The delivery of all papers and monies shall be made at the city hall offices of the City of Faribault and/or at the offices of the Title Company. If the closing date is changed, any and all costs, if prorated, shall be adjusted to the new closing date. Buyer agrees that Seller shall have the right to remove all personal property, documents and records from the Property prior to Closing.

14. ADDITIONAL DOCUMENTS: Buyer and Seller agree to cooperate with each other and their representatives regarding any reasonable requests made subsequent to the execution of this Agreement to correct any clerical errors in this Agreement and to provide any and all additional documentation deemed necessary by either party to effectuate the transaction contemplated by this Agreement.

15. NOTICES: Any notice required or permitted to be given by any party upon the other is given in accordance with the Agreement if it is directed to the Seller by delivering it personally to the Seller; or if it is directed to the Buyer, by delivering it personally to an officer of the Buyer; or to either party if mailed in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid; or if transmitted to either party by facsimile, copy followed by mailed notice as above required; or if deposited by either party, cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

IF TO THE SELLER: Faribault Foods, Inc.
222 South Ninth Street, Suite 3380
Minneapolis, MN 55402

AND COPY TO: Winthrop & Weinstine
Attn: Brooks Poley and Ann Steingraeber
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402

IF TO THE BUYER: City of Faribault
Attn: City Administrator
208 1st Avenue NW
Faribault, MN 55021

AND COPY TO: Scott J. Riggs, City Attorney
KENNEDY & GRAVEN, CHARTERED
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit as aforesaid; provided, however, that if notice is given by deposit, that the time for the response to any notice by the other party shall commence to run one (1) business day after any such deposit. Any party may change its address for the service of notice by giving written notice of such change to the other party, or in any manner above specified, ten (10) days prior to the effective date of such change.

16. EXECUTION IN COUNTERPARTS: This Agreement may be executed in counterparts by the parties hereto, each of which when so executed shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

17. ENTIRE AGREEMENT/MODIFICATION: This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between Seller and Buyer, and supersedes any other written or oral agreements between Seller and Buyer. This Agreement can only be modified in writing signed by Seller and Buyer.

18. CHOICE OF LAW AND VENUE; INTERPRETATION: This Agreement shall be

governed by, enforced and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

19. NO BROKERS INVOLVED: The Buyer and Seller have not entered into a contract to engage the services of a real estate broker regarding this transaction or the Property. Seller agrees to pay for and indemnify the Buyer for any and all claims for brokerage commissions or finders' fees in connection with negotiations for the purchase of the Property arising out of any alleged agreement or commitment or negotiation by Buyer or Seller.

20. CUMULATIVE RIGHTS: Except as may be otherwise provided elsewhere herein, no right or remedy herein conferred on or reserved to Buyer or Seller is intended to be exclusive of any other right or remedy provided herein or by law, but such rights and remedies shall be cumulative and in addition to every other right or remedy given herein or elsewhere or hereafter existing at law in equity, or by statute.

21. ASSIGNMENT: Buyer may not assign its rights and obligations under this Agreement to another entity.

22. CAPTIONS, HEADINGS OR TITLES: All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of the Agreement or a limitation of the scope of the particular paragraphs or sections to which they apply.

(Remainder of page left intentionally blank)

NOTICE: THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYER AND SELLER. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

The undersigned, owner of the above Property, does hereby approve the above Agreement and the sale thereby made of the Property for the price and upon the terms above mentioned, and subject to all conditions herein expressed.

SELLER: Faribault Foods, Inc.

By: _____

Name: _____

Title: _____

Dated: April ____, 2019.

The Agreement has been approved by the City of Faribault City Council. The undersigned does hereby approve the above Agreement and agrees to purchase the Property for the price and upon the terms above mentioned, and subject to all conditions herein expressed.

BUYER: City of Faribault

By: _____

Kevin F. Voracek, Mayor

Dated: April ____, 2019.

By: _____

Timothy C. Murray, City Administrator

Dated: April ____, 2019.

This instrument was drafted by:
CITY OF FARIBAULT
208 1st Avenue NW
Faribault, MN 55021

EXHIBIT A
LEGAL DESCRIPTION

That part of the Northwest Quarter of the Northeast Quarter of Section 30, Township 110 North, Range 20 West of the Fifth Principal Meridian, Rice County, Minnesota, described as follows:

Beginning at the Northwest corner of said Northwest Quarter of the Northeast Quarter; thence South 89 degrees 44 minutes 13 seconds East, assumed bearing, along the North line of said Northwest Quarter of the Northeast Quarter, 392.02 feet, said point also being in the Easterly line of the abandoned Chicago and Northwestern Transportation Co. right of way; thence South 0 degrees 45 minutes 00 seconds West, along said easterly right of way line, 179.06 feet; thence southerly, along said easterly right of way line, on a curve concave easterly (curve data: radius = 1398.07 feet; delta angle = 2 degrees 50 minutes 39 seconds; chord bearing and distance = South 0 degrees 40 minutes 19 seconds East, 69.39 feet), an arc distance of 69.40 feet to the true point of beginning of the parcel to be herein described; thence continue along said Easterly right of way line on said curve, concave easterly (curve data: radius = 1398.07 feet; delta angle = 15 degrees 52 minutes 38 seconds; chord bearing and distance = South 10 degrees 01 minutes 58 seconds East, 386.18 feet), an arc distance of 387.42 feet; thence South 89 degrees 44 minutes 13 seconds East, 90.95 feet to a point in the center of the Cannon River; thence North 14 degrees 11 minutes 55 seconds East, along said center of the Cannon River, 391.49 feet; thence North 89 degrees 44 minutes 13 seconds West, 254.26 feet to said true point of beginning,

EXCEPT any part thereof lying within that part of the North One-half of the Northeast Quarter of Section 30, Township 110 North, Range 20 West of the Fifth Principal Meridian, Rice County, Minnesota, described as follows: Beginning at a point in the South line of said North One-half of the Northeast Quarter (for the purposes of this description bearings are assumed and based on said South line being South 89 degrees 50 minutes 45 seconds East), a distance of 282.57 feet easterly from the Southwest corner of said North One-half of the Northeast Quarter; thence North 0 degrees 45 minutes 00 seconds East, 759.51 feet; thence South 89 degrees 44 minutes 13 seconds East, 281.15 feet to the main channel of the Cannon River; thence southerly and southeasterly, along said center line of the main channel on the following four courses; thence South 14 degrees 11 minutes 55 seconds West, 69.75 feet; thence South 16 degrees 26 minutes 27 seconds East, 179.75 feet; thence South 32 degrees 26 minutes 30 seconds East, 134.22 feet; thence South 53 degrees 41 minutes 26 seconds West, 120.67 feet; thence North 73 degrees 48 minutes 14 seconds East, 94.40 feet to the Southerly bank of the Straight River; thence easterly, along said southerly bank of the Straight River to a point in the northerly prolongation of the East line of Central Avenue in the plat of Riverside Addition to the City of Faribault, Minnesota; thence South 0 degrees 19 minutes 36 seconds East, along said northerly prolongation of said East line of Central Avenue, about 278 feet to the Northeast corner of said Central Avenue in said plat; said point also being in the South line of the North One-half of the Northeast Quarter; thence North 89 degrees 50 minutes 45 seconds West, along the South line of said North One-half of the Northeast Quarter, 841.14 feet to said point of beginning.

Abstract Property

ALONG WITH non-exclusive easements for access and driveway purposes granted in the Warranty Deed dated March 21, 1986, recorded March 21, 1986 as Document No. 308824 in Book 331 of Deeds, Page 589, and described as follows:

An easement over and across a strip of land 25.00 feet in width, lying easterly from, parallel with and contiguous to the following described line:

Beginning at a point in the North line of the Northwest Quarter of the Northeast Quarter, South 89 degrees 44 minutes 13 seconds East, 392.02 feet from the Northwest corner of said Northwest Quarter of the Northeast Quarter; thence South 0 degrees 45 minutes 00 seconds West, along said Easterly right of way line, 179.06 feet; thence southerly, on a curve, concave easterly (curve data: radius = 1398.07 feet; delta angle = 2 degrees 50 minutes 39 seconds; chord bearing and distance = South 0 degrees 40 minutes 19 seconds East, 69.39 feet), an arc distance of 69.40 feet and there terminating;

And

An easement across a strip of land 40.00 feet in width, being 20.00 feet on both sides of the following described line: Commencing at the Northwest corner of the first above described parcel; thence South 89 degrees 44 minutes 13 seconds East, along the North line of said first above described parcel, 153.94 feet and there terminating.

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Property/Building Location

