



## Request for Council Action

**TO:** Mayor and City Council  
**THROUGH:** Tim Murray, City Administrator  
**FROM:** Deanna Kuennen, Com. & Econ Dev Director  
**MEETING DATE:** July 23, 2019  
**SUBJECT:** Approve Amendment to Purchase Agreement for  
217 Mill Street

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### **Background:**

On May 14, 2019 the City Council authorized the acquisition of the property at 217 Mill Street, including PIDs 18.31.4.00.003, 18.31.4.00.009, 18.31.4.26.073, and 18.31.4.00.006, via Resolution 2019-095. The purchase agreement was signed and executed, establishing that the closing shall occur within 30-days following the end of the Due Diligence Period. The Due Diligence Period expired on June 24, 2019, however not all of the Seller's obligations have been fulfilled, including the completion and submittal of the title work. The proposed amendment extends the Due Diligence Period through August 2, 2019, effectively extending the closing date to September 1, 2019. In consultation with our City Attorney, Staff believes that this extension will provide adequate time to review the title work once it is received.

### **Recommendation:**

Approve First Amendment to the executed Purchase Agreement for 217 Mill Street, Faribault, MN

### **Attachments:**

- First Amendment to Purchase Agreement – 217 Mill Street
- Resolution 2019-095

## Property Acquisition - Lockerby Land

This map is neither a legally recorded map nor a survey. This map is a compilation data affecting the area shown; and is for reference purposes only. In using the map, you assume responsibility for the correctness all information extracted from this map.



- Lockerby Owned Parcel
- City Owned Parcel
- e911 roads

## FIRST AMENDMENT TO PURCHASE AGREEMENT

This First Amendment to Purchase Agreement (the “First Amendment”), has been made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2019, by and between Dwight R. Lockerby, Jr. and Dianne M. Lockerby, married to each other (“Sellers”), and the City of Faribault, a municipal corporation organized under the laws of Minnesota (“Buyer”).

### RECITALS

**WHEREAS**, the Sellers and the Buyer are parties to that certain Purchase Agreement, dated May 14, 2019 (the “Purchase Agreement”); and

**WHEREAS**, the Sellers and the Buyers do hereby wish to amend the Purchase Agreement as hereinafter set forth.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Section 9 of the Purchase Agreement is hereby amended to add the double-underlined language and delete the ~~stricken~~ language as follows:

9. **Inspection Period.** Subject to the timely delivery of title work pursuant to Section 6 and the timely completion and delivery of the Phase I Environmental Site Assessment pursuant to Section 8.B., Buyer shall have until ~~June 24, 2019~~August 2, 2019 (the “Due Diligence Period”) to (i) conduct such reviews, inspections and tests of the Real Property as Buyer in its sole discretion deems necessary or advisable, and (ii) obtain such federal, state and local governmental approvals and permits as Buyer in its sole discretion deems necessary or advisable for Buyer’s proposed development and use of the Real Property. Such due diligence by Buyer shall include, but not necessarily be limited to, the following:

Sellers shall allow Buyer and its agents the right of any ingress and egress over and through the Real Property for the purpose of inspecting and testing the same and making other observations as Buyer deems necessary, all however, at Buyer’s expense. Buyer agrees to indemnify and hold Sellers harmless from all injury, death, or property damage or claims of any kind whatsoever arising out of or in any way incidental to Buyer’s presence on the Real Property for the purposes of this Section 9, which indemnity and hold harmless obligation of Buyer shall survive termination of this Agreement for any reason.

If prior to the end of the Due Diligence Period, Buyer finds any information or conditions relating to the Real Property, Buyer shall have the right to terminate this Agreement by giving written notice of termination to Sellers no later than the end of the Due Diligence Period and in such case, the Earnest Money shall be promptly refunded to Buyer.

Notwithstanding the Due Diligence Period set forth in this Section 9, if the timely delivery of title work pursuant to Section 6 and the timely completion and delivery of the Phase I Environmental Site Assessment pursuant to Section 8.B. does not occur, the Sellers and Buyer reasonably agree to mutually extend the Due Diligence Period to a new date.

2. Except with regard to the amendment set forth above, all other provisions of the Purchase Agreement shall remain unchanged.

**IN WITNESS WHEREOF**, the Sellers and the Buyer have caused this First Amendment to be signed and executed on their behalf as of the day and year first written above.

**SELLERS**

By: \_\_\_\_\_  
Dwight R. Lockerby, Jr.

By: \_\_\_\_\_  
Dianne M. Lockerby

**BUYER**

By: \_\_\_\_\_  
Kevin F. Voracek  
Its: Mayor

By: \_\_\_\_\_  
Timothy C. Murray  
Its: City Administrator