

CONTRACT ROUTING FORM

****NOTE: CITY ATTORNEY MUST REVIEW CONTRACTS
BEFORE SUBMISSION TO CITY COUNCIL**

SUBMITTED BY: Remy Long DATE: 8-1-2019

SERVICE AREA/UNIT: Community Services

CONTRACTOR: _____

PURPOSE: Renewal of Purchase Agreement for DeVine-Koselka Greenbelt Project

CONTRACT TYPE:

☐

SERVICES

☐

MATERIALS/CONSTRUCTION

☐

CHANGE ORDER/AMENDMENT

CHANGE AMOUNT: \$ _____

☒

OTHER:

CONTRACT AMOUNT: \$ 655,000.00

DATE CONTRACT EXPIRES: August 31, 2019

RESOLUTION REQUIRED: ☒ YES NUMBER: R-18-066

☐

NO PROJECT MEMO ATTACHED

SIGNATURES: PLEASE MARK PAGES

(IN ORDER)

REQUIRED

SIGNED

DATE SIGNED

CONTRACTOR

☐☐

SERVICE AREA

☐☐

CITY ATTORNEY

☐☐

CITY ADMINISTRATOR

☐☐

MAYOR

☒☒

8-2-19

CITY CLERK

☒☒

8/3/19

RETURN CONTRACT TO: Remy Long PHONE: x42798

**AMENDMENT NO. 3
TO REAL ESTATE PURCHASE AGREEMENT
BETWEEN THE CITY OF ANN ARBOR AND SUZANNE L. DEVINE AND JOHN J.
KOSELKA**

This amendment is between the City of Ann Arbor, a Michigan municipal corporation with offices at 301 E. Huron St., Ann Arbor, Michigan 48104 ("Purchaser") and Suzanne L. DeVine and John J. Koselka, wife and husband and joint tenants with full rights of survivorship, whose address is 860 S. Zeeb Road, Ann Arbor, MI 48103 ("Seller").

Purchaser and Seller agree to amend the original agreement between them, titled REAL ESTATE PURCHASE AGREEMENT and with an effective date of November 2, 2018, as follows:

The first paragraph of section 15(a) of the original agreement is amended to read:

15. Closing. (a) The closing shall take place as soon as reasonably possible following the satisfaction of the conditions in this agreement on a date selected by Purchaser and agreed to by Seller, but no later than August 31, 2019.

The following new paragraph is added as section 16(m):

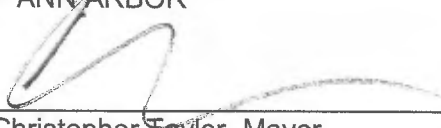
Based upon a survey and appraisals received by Purchaser as of June 28, 2019 and the agreed upon Purchase Price, Purchaser acknowledges that a portion of this Conservation Easement is being donated by Seller. Purchaser states that it is a qualified organization under section 170(c) of the Internal Revenue Code and that it will timely sign an IRS form 8283 prepared by Seller acknowledging this donation, provided that the information in Section B, Part I, "Information on Donated Property" is complete and is an accurate representation of the donation. Purchaser cannot guarantee and makes no representation as to (1) what monetary value of the donation the IRS or state will accept; or (2) what the resulting tax benefits will be, if any. Seller is responsible for obtaining their own professional legal and financial advice regarding this transaction. Seller acknowledges that representations of Purchaser, its agents, or subcontractors as to the tax treatment or financial implications of this transaction are intended to be informational only and that it is Seller's obligation to seek independent professional advice regarding any proposed course of action. Seller is responsible for compliance with all federal and state tax rules and Seller shall bear all costs related to claiming any tax deduction, including the cost of all appraisals or certifications used to substantiate the deduction.

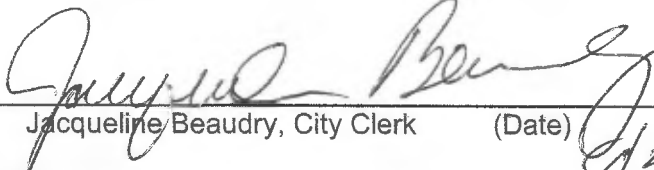
Unless modified by this amendment, all provisions of the original agreement remain in effect and apply to this amendment. This amendment supersedes and replaces all prior amendments to the original agreement.

(Signatures on following page)

PURCHASER

CITY OF ANN ARBOR

By:  8.2.19
Christopher Taylor, Mayor (Date)

By: 
Jacqueline Beaudry, City Clerk (Date)

SELLER

By:  7-31-19
Suzanne L. DeVine (Date)

By:  7/31/19
John J. Koselka (Date)

8/3/19

REAL ESTATE PURCHASE AGREEMENT

This agreement is between the City of Ann Arbor, a Michigan municipal corporation with offices at 301 E. Huron St., Ann Arbor, Michigan 48104 ("Purchaser") and Suzanne L. DeVine and John J. Koselka, wife and husband and joint tenants with full rights of survivorship, whose address is 860 S. Zeeb Road, Ann Arbor, MI 48103 ("Seller").

Purchaser and Seller agree as follows:

1. **Effective Date.** The effective date of this agreement shall be the date that all parties have signed.
2. **Real Property.** Seller states that they are the fee owner of real property located in Scio Township, Washtenaw County, Michigan, commonly known as 860 S. Zeeb Road, Ann Arbor, MI 48103 and described on the attached Exhibit A ("Real Property").
3. **Conservation Easement.** Purchaser shall purchase from Seller and Seller shall sell to Purchaser a conservation easement on the Real Property ("Conservation Easement"). The Conservation Easement shall cover the entire Real Property except for an approximately 5.0-acre area encompassing the area of existing buildings on the Real Property. The terms of the Conservation Easement, including the legal description, shall be determined by separate agreement of Seller and Purchaser. Seller and Purchaser agree to promptly commence and pursue in good faith to conclusion the form of Conservation Easement; if they cannot agree to the terms of the Conservation Easement, either party may terminate this agreement by written notice to the other.
4. **Purchase Price.** The purchase price for the Conservation Easement is \$655,000.00 (the "Purchase Price"), which shall be payable at closing. Purchaser may seek and accept contributions toward the Purchase Price from one or more governmental or conservation entities ("Funding Entities"), which Seller acknowledges may entail additional requirements that Seller must meet in order to complete the sale of the Conservation Easement. Seller shall endeavor to meet such requirements; provided, however, that Purchaser may terminate this agreement if Seller is unable to or does not comply with all Funding Entities' requirements related to the Conservation Easement.
5. **Title; Survey.** (a) At the closing, Seller shall convey the Conservation Easement to Purchaser. As evidence of Seller's title, Purchaser shall, within 60 days after the effective date of this agreement, provide to Seller a commitment from a title company selected by Purchaser and reasonably satisfactory to Seller to issue a title insurance policy insuring Purchaser for the Conservation Easement in the amount of the Purchase Price ("Title Commitment"). The Title Commitment shall be on the latest form approved by the American Land Title Association ("ALTA") for the State of Michigan and shall not contain the standard printed exceptions. The Title Commitment must show good and marketable title to the Real Property to be in Seller's name. Seller shall not place or permit any third party to place any additional liens, easements, restrictions, claims, or encumbrances on or against the Real Property following the effective date of this agreement unless consented to by Purchaser in writing. Seller shall satisfy the requirements set forth in the Title Commitment at or before the closing.

(4) All title policies pertaining to and surveys of the Real Property

(5) All environmental reports pertaining to the Real Property.

(6) All written notices that Seller has received from a governmental entity in connection with the use and operation of the Real Property including wetland and fill permits and zoning variances.

(b) Any Seller Document not in Seller's possession or control upon Seller's execution of this agreement, but which comes into Seller's possession or control prior to closing, shall be delivered to Purchaser as soon as possible prior to the closing. If Seller does not possess a Seller Document referenced but has knowledge of its existence, Seller shall disclose to the full extent of Seller's knowledge the information contained in the document or the whereabouts of the document and assist Purchaser in obtaining the document.

8. **Environmental Assessment.** (a) Purchaser may conduct one or more environmental assessments of the Real Property, including Phase I or Phase II Environmental Site Assessments ("ESA") or Baseline Environmental Assessments, and may collect samples of soil, groundwater, air, or other matter on the Real Property. If any environmental assessment or testing discloses any recognized environmental condition ("REC") or other environmental hazard that Purchaser or any Funding Entity deems will impair the purpose or use of the Conservation Easement, Purchaser may terminate this agreement.

(b) Purchaser shall pay the cost of all Phase I ESAs. If Purchaser desires or is required to perform additional environmental testing based on any finding or recommendation in a Phase I ESA in connection with a REC, Purchaser shall prepare a written synopsis of the scope of the additional environmental testing ("Environmental Testing Work Plan Report"), which Purchaser shall provide to Seller along with a copy of the Phase I ESA. After receipt and review of the Environmental Testing Work Plan Report and Phase I ESA, Seller shall either (1) acknowledge Seller's continued interest in the sale of the Conservation Easement subject to the results of the additional testing or (2) terminate this agreement. If Seller acknowledges their continued interest in the sale of the Conservation Easement, Seller shall be responsible for the reasonable cost of all additional environmental testing in connection with any REC, unless otherwise agreed to in writing by Purchaser. Purchaser or Seller may postpone the closing for a reasonable period of time for the purpose of conducting additional testing. Purchaser shall provide copies of all additional testing reports to Seller.

(c) If the parties elect to proceed to closing and any environmental assessment shows that environmental contamination exists at the Real Property at the time of purchase that is above residential cleanup criteria issued by the Michigan Department of Environmental Quality or its successor and that removal or some other type of remediation is required by law ("Contamination"), Seller shall sign any required Hazardous Waste Disposal Manifest or other regulatory documentation necessary under hazardous material laws to achieve proper disposal of the Contamination. Seller shall pay the costs of all legally required remediation, removal, or disposal of the Contamination.

(d) All completed environmental assessments shall be delivered to Purchaser and be the property of Purchaser. To the extent permitted by law, Purchaser shall restrict disclosure of the results to City employees and Agents until the closing or termination of this agreement. Seller acknowledges that Purchaser must comply with applicable record retention and disclosure laws.

- (4) Agreement to the terms of the Conservation Easement by all Funding Entities.
 - (5) Delivery to Purchaser by the Washtenaw County Parks and Recreation Commission of \$131,000 toward the Purchase Price.
 - (6) Award and delivery to Purchaser of grant funds by USDA's Agricultural Conservation Easement Program (ACEP).
- (b) Seller's obligation to complete the sale of the Conservation Easement is contingent upon Seller's approval of all of the following:
- (1) The terms of the Conservation Easement.
 - (2) A Conservation Plan prepared by the Natural Resources Conservation Service compliant with USDA-ACEP requirements.
 - (3) The initial location of any building envelope, as defined by USDA-ACEP requirements.

12. Pre-Closing Obligations of Seller. Prior to closing, Seller shall do all of the following:

- (1) Make all reasonable efforts to maintain the Real Property in good condition and repair, normal wear and tear excepted.
- (2) Pay all taxes and special assessments that are due and payable on the Real Property.
- (3) Comply with all Seller's legal obligations affecting the Real Property except to the extent Seller is contesting the obligations in good faith.
- (4) Take all necessary actions to remove any trash, debris, or other waste material on the Real Property.

13. Taxes and Assessments. All taxes and assessments that are a lien upon the Real Property or which otherwise relate to the Real Property and are due and payable at closing shall be paid at closing. All taxes and assessments on the Real Property or which otherwise relate to the Real Property shall be the responsibility of Seller.

14. Additional Terms. (a) 1031 Exchange. Purchaser acknowledges that Seller may have the option to qualify this transaction as part of a tax-deferred exchange under Section 1031 of the Internal Revenue Code. Purchaser agrees to cooperate, as necessary, with Seller in order to complete such an exchange, which Seller shall ensure neither delays the closing nor causes expense or liability to Purchaser.

(b) **Access for Educational Programming.** Seller acknowledges as a condition of purchase of the Conservation Easement that the Washtenaw County Parks and Recreation Commission requires that the Washtenaw County Parks and Recreation Commission may conduct educational programming on the Real Property pursuant to the terms specified in the Conservation Easement.

Seller: Suzanne DeVine and John Koselka
860 S. Zeeb Road
Ann Arbor, Michigan 48103

City: City of Ann Arbor
301 E. Huron St.
Ann Arbor, Michigan 48104
Attn.: Christopher Frost
Senior Assistant City Attorney

- (c) This agreement shall be governed by the laws of the State of Michigan;
- (d) Risk of loss or damage to the Real Property and all liability to third persons shall, except as otherwise expressly provided herein, be borne by Seller.
- (e) A party may waive all or part performance by the other party of any obligation under this agreement by a writing signed by the waiving party. Such a waiver shall not be construed as a waiver of any preceding or succeeding performance of any obligation.
- (f) Headings of this agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this agreement.
- (g) This agreement may not be amended, altered, or modified except in writing signed by the parties.
- (h) If any provision of this agreement is determined by a court of competent jurisdiction to be invalid, either party may terminate this agreement within seven days of the determination, otherwise the remainder of the agreement shall remain in force.
- (i) This agreement contains all of the obligations and statements by Seller and Purchaser to one another and expresses the entire understanding between the Seller and Purchaser with respect to the purchase of the Conservation Easement. All prior and contemporaneous communications concerning the purchase are merged in and replaced by this agreement.
- (j) Purchaser shall not assume any liabilities of Seller by execution of this agreement.
- (k) In the event of a breach by a party, the other party may terminate this agreement by notice to the breaching party.
- (l) The prevailing party shall have the right to collect from the other party its reasonable costs and attorney fees incurred in enforcing this agreement or in an action for damages arising out of breach of this agreement or any false statement, misrepresentation, or breach of warranty under this agreement.

(Signatures on following page)

EXHIBIT A
LEGAL DESCRIPTION

REAL PROPERTY

Commencing at the South 1/4 corner of Section 28, T2S, R5E, Scio Township, Washtenaw County, Michigan; thence North 01°23'32" East 660.35 feet along the North-South 1/4 line of Section 28 for a Place of Beginning; thence continuing North 01°23'32" East 1974.36 feet along the North-South 1/4 line to the Center of Section 28; thence North 89°51'32" East 1325.56 feet along the East-West 1/4 line of Section 28; thence South 01°28'21" West 660.42 feet along the East line of the West 1/2 of the Southeast 1/4 of Section 28, thence North 89°55'58" East 1324.59 feet along the North line of the South 20 acres of the North 1/2 of the East 1/2 of the Southeast 1/4 of Section 28; thence South 01°33'04" West 662.14 feet along the East line of Section 28 and the centerline of Zeeb Road (66 feet wide); thence North 89°59'36" West 1323.62 feet along the South line of the South 20 acres; thence South 01°28'21" West 660.42 feet along the East line of the West 1/2 of the Southeast 1/4 of Section 28; thence North 89°50'46" West 1322.61 feet to the Place of Beginning, being part of the Southeast 1/4 of Section 28.

North 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 28, Town 2 South, Range 5 East, Scio Township, Washtenaw County, Michigan, subject to a right of way for ingress and egress as disclosed in Liber 475, page 524, Washtenaw County Records, and the rights of the public and any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes.

Commonly known as: 860 S. Zeeb Road, Ann Arbor, MI 48103.

Parcel Tax IDs: H-08-28-400-011 and H-08-28-400-008