



MEMORANDUM

301 W. MAIN ▪ OWOSSO, MICHIGAN 48867-2958 ▪ WWW.CI.OWOSSO.MI.US

DATE: December 17, 2015

TO: City Council

FROM: Susan Montenegro, Assistant City Manager/Director of Community Development

SUBJECT: Purchase agreement between city of Owosso and Michael Cline – for parcels of land along Gould Street and Wright Avenue.

RECOMMENDATION:

Staff recommendation would be to counter the \$1,000.00 offer Mr. Cline has presented.

BACKGROUND:

City council tasked staff with preparing a purchase agreement for parcels along Gould Street and Wright Avenue. No price point was set for a minimum price on the land in question. The city accessor places a value of \$10,000.00 on the land (reduced from approximately \$26,000.00 because it is located in the flood plain). There continue to be concerns over accepting Mr. Cline's offer of \$1,000.00, setting a precedent that could affect future land sale prices of city owned property. Any potential sale would also involve completing a lot split and parcel combination once a purchase price is agreed upon by council. I've attached a copy of the Property Sale Policy adopted in November 2011 to help clarify the concerns of staff.

FISCAL IMPACTS:

The agreed upon price for this land sale could affect future property values in the area as well as set a precedent for the future sale of properties owned by the city.

Document originated by: Susan Montenegro

RESOLUTION NO. ____

**AUTHORIZING 21-DAY POSTING OF
PURCHASE AGREEMENT FOR THE SALE OF
CITY-OWNED PROPERTY BETWEEN GOULD STREET AND WRIGHT AVENUE**

WHEREAS, the city owns a several parcels of property along Gould Street, Allendale Avenue and Wright Avenue; and

WHEREAS, Michael N. Cline has expressed interest in purchasing a portion of these parcels described as follows;

LOTS 22 & 23 & SOUTH 17' LOT 24 INCLUDING EAST ½ OF ADJACENT CLOSED ALLEY. ALSO, LOTS 37 - 43, BLOCK 34, INCLUDING WEST ½ OF ADJACENT CLOSED ALLEY. ALSO LAND LYING BETWEEN WEST LINE OF LOTS 37-41 AND EAST LINE OF GOULD STREET, FORMERLY VACATED STANLEY AVENUE, GEORGE T. ABREY'S WOODLAWN PARK ADDITION TO CITY OF OWOSSO. (EXCEPT BEGINNING AT SW CORNER LOT 43, THEN NORTH 33' TO NW CORNER OF LOT 43, THEN SOUTHEASTERLY TO A POINT 9.83' EAST OF SW CORNER LOT 43, THEN WEST TO POINT OF BEGINNING, SAID POINT BEING EAST RIGHT OF WAY LINE OF GOULD STREET IN THE CITY OF OWOSSO, COUNTY OF SHIAWASSEE, MICHIGAN.

and

WHEREAS, the parcel is of no use to the City and the City desires its sale; and

WHEREAS, the land in question has a value of approximately \$10,000 as set by the city assessor and according to the city's Property Sale Policy; and

WHEREAS, Michael N. Cline approached the City offering to purchase the parcel described above, for One Thousand and NO/100 (\$1,000.00) Dollars; and

WHEREAS, the City Charter requires a 21-day posting period prior to the sale of any City-owned property to allow for public comment and potential offers.

NOW THEREFORE BE IT RESOLVED by the city council of the city of Owosso, Michigan that:

1. The purchase agreement for the property described above be posted for a 21-day period to allow for citizen comment.
2. The agreement be returned to council at the meeting of January 18, 2016 for potential final disposition.



AGREEMENT FOR PURCHASE OF REAL ESTATE

THE PURCHASER, (Michael N. Cline), hereby offers and agrees to purchase, and the SELLER, (the City of Owosso, a Michigan Municipal Corporation), hereby agrees to sell, land situated in the City of Owosso, Shiawassee County, Michigan upon the following terms and conditions.

WHEREAS Purchaser offered and wishes to purchase certain property from Seller and Seller wishes to sell the same:

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **PROPERTY DESCRIPTION:** A parcel of land, together with all buildings, structures, rights, easements and appurtenances pertaining thereto and all improvements, trees, bushes, landscaping and foliage thereon, (the "Property"). The legal description of the parcel is as follows:

LOTS 22 & 23 & SOUTH 17' LOT 24 INCLUDING EAST ½ OF ADJACENT CLOSED ALLEY. ALSO, LOTS 37 - 43, BLOCK 34, INCLUDING WEST ½ OF ADJACENT CLOSED ALLEY. ALSO LAND LYING BETWEEN WEST LINE OF LOTS 37-41 AND EAST LINE OF GOULD STREET, FORMERLY VACATED STANLEY AVENUE, GEORGE T. ABREY'S WOODLAWN PARK ADDITION TO CITY OF OWOSSO. (EXCEPT BEGINNING AT SW CORNER LOT 43, THEN NORTH 33' TO NW CORNER OF LOT 43, THEN SOUTHEASTERLY TO A POINT 9.83' EAST OF SW CORNER LOT 43, THEN WEST TO POINT OF BEGINNING, SAID POINT BEING EAST RIGHT OF WAY LINE OF GOULD STREET IN THE CITY OF OWOSSO, COUNTY OF SHIAWASSEE, MICHIGAN.

2. **PURCHASE PRICE:** Purchaser shall pay therefore the sum of One Thousand and No/100 (\$1,000.00) Dollars (the "Purchase Price").

3. **DEPOSIT:** Purchaser herewith deposits with Seller the sum of One Hundred and No/ 100 (\$100.00) Dollars, as a deposit which shall be applied to the purchase price at closing.

4. **METHOD OF CLOSING:** The sale shall be consummated by the delivery of a Warranty Deed conveying fee simple marketable title with the balance of the purchase price to be paid in cash or by certified check at the time of closing. Consummation of this Agreement is subject to the approval of the Owosso City Council.

5. **TAXES:** All taxes and assessments due as of the closing date, including but not limited to any and all special assessments, even if payable in installments after closing, which have become a lien upon the land, whether recorded or unrecorded, at the date of this agreement shall be paid by the Seller. Purchaser shall pay all taxes and special assessments assessed after the closing date.

6. **CLOSING FEES:** Any closing fees charged for services rendered by an escrow company shall be divided equally between Purchaser and Seller except where the payment of same shall be prohibited by law.

7. **CONDITIONS PRECEDENT.** Purchaser's and Seller's obligations under this Agreement are conditioned upon the satisfaction of each of the following conditions:

- (i) Purchaser, in Purchaser's sole discretion, obtaining a Survey, surveyor's report and surveyor's certificate.
- (ii) Purchaser is buying the property on an "as is" basis. Seller strongly recommends purchaser perform a baseline environmental study.
- (iii) Approval of the purchase by the Owosso City Council.

The above duties and terms shall survive the closing.

- (iv) If Purchaser and Seller fail to satisfy or be satisfied with any one or more of the contingencies set forth above, or if Purchaser determines, at Purchaser's sole and absolute discretion, or for any reason whatsoever, to terminate this Agreement, within the inspection and approval period as defined in paragraph 9, below, then Purchaser may, on or before expiration of the inspection and approval period, as defined in paragraph 9, below, terminate this Agreement by giving written notice thereof to Seller, and this Agreement shall be deemed to be null and void and of no further force or effect, and Purchaser and Seller shall have no further rights, obligations, or liabilities under this Agreement.

8. INSPECTION: Purchaser and their employees, agents, and representatives shall at all times before Closing, have the privilege, opportunity, and right to enter upon the Property to inspect, examine, and perform surveys, soil tests, borings, structural analysis and tests, and any other tests needed to determine structural surface, subsurface, and topographic conditions of the Property, or for any other reasons deemed necessary by Purchaser for the satisfaction of the conditions set forth in paragraph 7, above. Provided, however, that Purchaser, their employees, agents and representatives shall indemnify and defend Seller from any claims arising from their activities on the property relating to this right of inspection and shall return the property to its original condition.

9. INSPECTION AND APPROVAL PERIOD: From the Effective Date, Purchaser shall have until the closing date (the "Inspection and Approval Period") to inspect the Property in the manner set forth in paragraph 8 above; and to obtain such other studies, tests, determinations, assessments and approvals, including but not limited to structural testing and inspection, site plan approval, easements, licenses, variances, curb cuts, and as otherwise set forth in paragraph 7, above, and any other determinations, assessments and approvals that are necessary to permit Purchaser's intended use of the Property, as deemed in Purchaser's sole discretion. Any delay by Seller in performing its obligations pursuant to this Agreement shall result in an extension of the Inspection and Approval Period equal to the length of the delay.

10. CLOSING: The consummation of the purchase and sale of the Property pursuant to this Agreement (the "Closing") shall be held no later than 60 days from the last date of the signatures below. Closing shall take place at the title company, or such other location, as the Seller and Purchaser may mutually agree in writing. Purchaser shall take possession at closing.

11. TITLE INSURANCE: As evidence of title, Seller shall obtain, at Seller's sole cost and expense, a commitment for title insurance issued by a title company for a policy of title insurance from an underwriter acceptable to Purchaser, insuring title with standard exceptions.

12. OBJECTIONS TO CONDITION OF TITLE: If objection to the title is made by the Purchaser, then Seller may terminate this Agreement, or at its discretion, cure the objectionable defect. If this

Agreement is terminated by Seller due to an objection to title, the deposit shall be returned to Purchaser.

13. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS. Seller represents, warrants and covenants to Purchaser that:

- (a) Seller (i) has complete and full authority to execute this Agreement, (ii) will execute and deliver any documents, instruments, and agreements including, but not limited to, affidavits and certificates necessary to consummate the transaction contemplated herein, and (iii) will take all additional action that is reasonably necessary or appropriate to effect and facilitate the consummation of the sale and purchase transaction contemplated herein, as may be required by the Title Company.
- (b) Seller will not further sell, encumber, convey, or assign, or contract to sell, encumber, convey, assign, pledge, or lease all or any part of the Property or restrict the use of all or any part of the Property or take or cause to be taken any action in conflict with this Agreement at any time between the Seller's acceptance hereof and (i) Closing or (ii) the earlier termination of this Agreement pursuant to its terms.
- (c) Neither the entering into of this Agreement nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction, or decree issued against or imposed upon it or contract to which it is a party or will result in a violation by Seller of any applicable law, order, rule, or regulation of any governmental authority. There is no action, suit, proceeding or investigation pending which would become a cloud on the title to the Property or any portion thereof or which questions the validity or enforceability of the transaction contemplated by this Agreement or any action taken pursuant hereto in any court or before or by any federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality, nor does Seller have any knowledge that any such action, suit, proceeding or investigation is threatened.
- (d) Seller is not a "foreign person" as that term is defined in the Internal Revenue Code, Section 1445(F)(3) and the sale of the Property is not subject to any withholding requirements imposed by the Internal Revenue Code, including, without limitation, Section 1445(F)(3).
- (e) Seller is not a party to or bound by any contract or agreement of any kind or whatsoever, written or verbal, which might affect the Property.

14. MISCELLANEOUS:

- (a) Governing Law: This purchase agreement shall be governed by, construed and enforced in accordance with the laws of the State of Michigan.
- (b) Entire Agreement: This Agreement constitutes the entire, integrated agreement between the parties, and supersedes all prior written and unwritten negotiations, agreements, proposals and understandings. This Agreement shall not be orally amended, modified, superseded, or canceled, it being specifically understood that any of the terms, covenants, representations and conditions contained herein may be amended only by written instrument executed by all parties.

- (c) Binding Effect: The covenants and conditions herein shall bind and inure to the benefits of the executors, administrators, successors and assigns of the respective parties. If the parties herein be more than one or if they be of the feminine sex, or a corporation or other business entity, such words and pronouns and other relative words shall be read as if written in the plural, feminine, and neuter, respectively.
- (d) Assignment: This Agreement may be assigned or transferred only by written consent of the non-assigning party.
- (e) Counterparts: This Agreement may be executed in counterparts each of which may be deemed an original, and all such counterparts together shall be deemed one and the same agreement.
- (f) Survival: All warranties, covenants, duties and representations made herein shall survive closing.

15. BROKERS: If either party has used a broker, it shall be that party's responsibility to compensate its broker.

16. EFFECTIVE DATE: If this Agreement is not signed simultaneously by Seller and Purchaser it shall be considered to be an offer made by the party first executing it to the other party. In this event, that offer shall expire at midnight on the tenth (10th) calendar day following signature by the offering party. Effective date shall mean the date upon which this Agreement is accepted by the parties to whom the offer is made. Acceptance shall be deemed to have been made on the date the fully executed Agreement is received by the party first executing the Agreement.

17. NOTICES: All notices, requests, demands or other communications hereunder shall be in writing and deemed given (a) when delivered personally or (b) on the day said communication is deposited in the U.S. mail, by registered or certified mail, return receipt requested, postage prepaid, or (c) on the next business day after notice is sent by facsimile or (d) on the day said communication is deposited with a nationally recognized overnight courier service, addressed and/or sent by facsimile, as the case may be, as follows:

If to Seller:
City of Owosso
301 West Main Street
Owosso, Michigan 48867

ATTENTION: City Clerk

If to Purchaser:
Michael N. Cline
621 Wright Avenue
Owosso, Michigan 48867

ATTENTION: Michael Cline

The parties executed this Agreement for Purchase of Real Estate as of the date set forth below.

DATED: _____, 2015

DATED: _____, 2015

SELLER: City of Owosso

PURCHASER: Michael N. Cline

BY: _____
Benjamin R. Frederick
ITS: Mayor

BY: _____
Michael N. Cline

ATTEST:

Amy K. Kirkland, City Clerk

CITY OF OWOSSO POLICY FOR DISPOSITION OF CITY-OWNED REAL PROPERTY

BACKGROUND

The city of Owosso is or may become the owner of real property which is used for various municipal purposes, including land-banking. As public service needs change, the requirements for these properties maybe revised, and on occasion, certain parcels may be found greater than the city's current need. This requires reviewed of the site's potential for future public use and its potential economic benefit to the city.

PURPOSE

It is the purpose of this policy to:

- A. establish a procedure by which unused or marginally used city-owned real estate is reviewed for its potential public use and for designating unneeded parcels for lease or sale; and
- B. provide guidance for the auction, negotiated sale, or exchange of city-owned real estate; and
- C. establish the conditions under which city-owned real property may be leased.

POLICY

It is the city's policy to manage its real estate assets so that they may properly carry out municipal needs which rely on these assets. It is not the city's policy to speculate in real estate. The city council will review all city-owned real estate not adequately used for municipal purposes and determine the appropriate use of the property. Those properties needed for municipal purposes may be so designated. If a property is not needed for public use within the foreseeable future, it may be made available for lease or sale, or if it will be needed at a future time, it may be suitable for lease in the interim. Those properties not required for municipal use, including those acquired because the owner failed to pay taxes, or designated for lease may be designated for sale or reserved to be exchanged for other land the city needs. The city shall optimize the sale price or lease rent from city-owned real estate based on relevant factors including:

- A. an appraisal of the property which is no more than six months old at the time the sales agreement is presented to the city council,
- B. prevailing economic conditions and recent applicable trends, and
- C. any special benefits to accrue from the sale or lease.

Discounts will not be negotiated unless an extraordinary need or circumstance is recognized by city council resolution before negotiation, setting forth the amount of the discount and the justification for it. The purpose of this is to demonstrate to the community that the city is not making a gift of public assets.

The *Owosso City Charter* places limitations on the sale of property as follows:

Section 14.3(b). Limitations on Contractual Power.

- (b) The city shall not have power to purchase, sell, lease, or dispose of any real estate, unless:
 - (1) Such action is approved by the affirmative roll call vote of five or more members of the Council, and, unless;
 - (2) In the case of real estate owned by it, the resolution authorizing the sale, lease, or disposal thereof shall be completed in the manner in which it is to be finally passed and has remained on file with the Clerk for public inspection for twenty-one days after its

original introduction at a meeting of the Council before the final adoption or passage thereof and, unless;

- (3) When the proposition is to sell any park cemetery or any part thereof, except when such park is not required under an official master plan of the city, or any property bordering on a water front, the proposition to sell, lease, or dispose of the same shall also be approved by a three-fifths vote of the electors of the city voting thereon at any general or special election.

Section 15.5. Disposal of Municipal Utility Plants and Property.

The city shall not sell, exchange, lease, or in any way dispose of any property, easement, equipment, privilege, or asset needed to continue the operation of any municipal public utility, unless the proposition to do so is approved by a three-fifths majority vote of the electors of the city voting on such proposition at a regular or special city election. All contracts, grants, leases, or other forms of transfer in violation of this section shall be void and of no effect as against the city. The restrictions of this section shall not apply to the sale or exchange of articles of machinery or equipment of any municipally owned public utility which are no longer useful or which are replaced by new machinery or equipment, or to the leasing of property not necessary for the operation of the utility, or to the exchange of property or easements for other needed property or interests in property

PROCEDURE

A. Real estate review

All unused and marginally used city-owned real estate will be reviewed on a continuing basis to determine public facility needs and to implement the comprehensive plan on a timely basis. The following procedure will apply:

1. Review by appropriate city departments.
2. Review by any applicable city commission(s).
3. Review by the planning commission for consistency with the comprehensive plan and environmental impact.
4. The staff's recommendation and relevant comments along with those of the planning commission are submitted to the city council.
5. The city council then determines the designation to be applied to the property (e.g., public facility, open space, surplus, sale, or lease).

B. Comprehensive plan and rezoning.

Before marketing a parcel, staff will review the parcel for likely changes in density or intensity of use since the city acquired the property. If such changes are likely, then staff shall initiate a necessary rezoning and comprehensive plan amendment through the planning commission to enable marketing the property at its highest and best use. When different land-use classifications divide projects, staff will seek lot splits, lot mergers, or property-line adjustments to divide the property along use lines, to reserve rights-of-way for streets and utilities, and to be able to disclose the terms of development of the property.

C. Lease versus sale

City-owned real property not required for municipal uses may be designated for lease or sale using criteria listed below. At the time staff recommends whether the property should be sold, leased, or reserved for exchange purposes, council shall be provided with an appropriate analysis of the alternatives.

D. Sale of real estate

1. Auction

Unless otherwise directed by the city council, land which is readily marketable and unrestricted in its sale potential will be sold to the highest bidder at a public auction by either oral or sealed bid, provided that the highest bid equals or exceeds the minimum published price established by the city before bid opening, which price shall not be lower than the amount shown on the appraisal. Notice of the sale by bid shall be published in a newspaper of general circulation at least ten days before bid opening. If sealed bids are requested, a deposit must accompany each bid in the form of certified or cashiers' check made payable to the city in an amount equal to at least 10 percent of the bid amount. After sealed bids are opened, oral bids are permitted from bidders who can meet the 10 percent deposit requirement. The initial oral bid must be at least 5 percent higher than highest sealed bid. Subsequent oral bids must be in increments of not less than \$100.00. If the person whose bid is accepted fails to pay the total bid price within 60 days from acceptance of bid, the bidder's deposit is forfeited, and at the sole option of this city, property may be offered for sale to the next highest bidder on the same terms as granted the high bidder. The council shall be notified of bids received or, if applicable, the fact that no bids had been received. The council may reject any and all bids.

The minimum acceptable bid will usually be the appraised fair market value as determined by the city assessor or an independent Member of Appraisal Institute (MAI) appraiser. The intent of this procedure is to set a minimum bid which will ensure a fair return to the city for its property, while encouraging maximum participation in the bidding process.

The city council may determine that property should be developed in a specific manner and may issue a request for competitive proposals (RFP) based upon preestablished criteria, in which case the property would not be sold at auction but sold through public advertising and the solicitation of proposals which will be publicly examined. See appendix A.

2. Negotiated sales

If the property is to be developed in a manner that would satisfy a long-term objective of the city or no bids are received or no bids are deemed acceptable by the city council, the city may seek to sell land by one of the following:

Marketing - Competitive offers for lease or sale may be solicited from the open market. This may be accomplished through several marketing techniques, such as requests for proposals (RFPs), a marketing subscription system, direct advertising, exposure through real estate services, posting the property, and any other appropriate means.

Direct marketing - seeking to sell the property through direct contacts under the following circumstances:

- a. When the land is not readily marketable because of its odd shape, lack of sufficient area to meet minimum space requirements for building in the zone in which it is located, landlocked state, or other lack of sales potential, the land may be sold by taking offers or by negotiation with adjoining landowners, provided the purchase price agreed upon is within 10 percent of the appraisal or the land is exchanged for public improvements of equal or greater value that would otherwise be the obligation of the city.
- b. When the sale to a contiguous owner would correct a site deficiency or improve access to the other property in a manner desired by the city.
- c. When a fee interest in public right-of-way is no longer required, it may be sold to a contiguous owner or exchanged for public improvements of equal or greater value. A

restrictive easement of adequate width or other required easements may be reserved from said sale.

- d. When other governmental, public, and quasi-public agencies submit proposals to acquire city property, the city shall consider such requests before making the land available to the general public. Such sales shall be at fair market value, unless the council finds that selling at a lesser value is in the city's interest. Selling land at less than the appraised fair market value shall require a four-fifths vote of the city council to do so.
- e. When qualified, nonprofit institutional organizations offer to purchase city-owned land, a negotiated sale may be consummated at fair market value, providing there is (1) a development commitment and (2) a right to repurchase or a reversion upon a condition subsequent. Nonprofit and institutional organizations are required to develop under the city's conditional use permit procedure.
- f. When a property has been offered by public auction and no acceptable bids have been received, it may be sold on a negotiated basis to any applicant submitting an acceptable offer within six months following the date of auction. After six months, any offer must be based on an updated appraisal.
- g. When a property is to be developed in a manner that would satisfy a long term objective of the city, the sale may be negotiated as long as the objectives of the city are protected by the sale agreement.
- h. Real property exchanges may be consummated by direct negotiation; however, exchanges will be considered only when there is an advantage to the city, when it results in land needed for a public purpose, or to further the goals and objectives of the city's comprehensive plan.

E. Easements

Where the city or other governmental agency has paid for easements, rights-of-way, or access rights and requests to vacate such interests are received and approved, the city shall receive the current fair market value or equivalent compensation for the removal of the restriction. Easements may be exchanged for other easements or relocated to other locations without compensation.

F. Exchanges

When land is exchanged, it shall be done based on the fair market value of each property as determined by MAI appraisal. Any difference in value shall be made up by the party with the lower appraisal value.

G. Payment for city surplus property

Sales of real property shall be on an all cash-basis, with the following exceptions:

- 1. Upon written recommendation and approval by the council, a parcel of surplus real property may be sold on such credit terms as are deemed to be necessary in each case. After the required down payment has been made, the balance of the purchase price shall be secured by a note and deed of trust. The credit payment period shall not exceed five years from the date of execution of the trust deed. Interest shall be at the prevailing rate in the community, and the use of term payments shall be linked to job generation for the sale of commercial or industrial property.

2. Sales to nonprofits performing a public purpose may be in the form of a loan or residual receipts note at less than the prevailing interest rates and for more than five years, provided the note is tied to affordable housing.

H. Leasing

1. Rate of return. Except for the areas listed below, the city shall obtain a fair market rate of return on city-owned property being considered for lease and negotiate terms and conditions which will continue to sustain a fair rate of return through rent review, consumer price index adjustments, reappraisals, or the application of percentage rents to gross income. The rate of return shall be based upon the highest rate commensurate with the highest and best use of the property or a fair rate of return commensurate with the designated public use. Rental rates shall be established by the city council based on a current appraisal, comparative studies, or past rents received.
2. Long-term lease. A lease greater than one (1) year requires council approval.
3. Short-term lease. Unless there are special circumstances, the city manager without council approval may execute a lease term of less than one (1) year. A short-term lease may not be renewed without council approval.
4. Selection of lessee. Lease proposals shall be evaluated in terms of:
 - a. Consideration offered as rent,
 - b. Financial capability,
 - c. Expertise regarding the proposed leasehold development and operation,
 - d. Nature of proposed development,
 - e. Special public benefits to be derived (if any), and
 - f. Consistency of the intended use with the comprehensive plan and zoning.
5. Leasehold assignments. Requests for assignment of leasehold interest will be evaluated on the same basis as the criteria used in evaluating a leasehold proposal. The city manager may authorize assignments which do not require amendment of the master lease provisions and do not extend beyond the term of the lease.
6. Subleases. Requests for sublease approval will be considered on the merits of each individual transaction. No sublease shall be approved which would be detrimental to the city's rights under the master lease. The city manager may authorize subleases which meet this condition and which do not require amendment of the master lease or extend the term of the lease.
7. Amendments. Amendments of long-term leases require council authorization. Whenever there is a substantial amendment, staff shall provide the council an indication of the fair return for the leasehold. This can be accomplished by appraisals, a survey of the market rate of return, a combination of the above, or any other relevant information.
8. Updating lease terms. Lease terms shall be updated as often as practicable whenever there is a request for assignment or significant amendments or subleases are proposed.
9. Financial encumbrances. The city will generally not subordinate its fee interest to encumbrances placed against the leasehold by the lessee without specific authorization of the city council.
10. Tenant improvements. Improvements installed by the lessee will be removed at termination without cost to the city or they will revert to the city. In the event of removal, the property will be returned to "as was" condition. All leasehold improvements and

alterations require prior approval by the city manager or city council, depending on the term of the lease. Any improvements within a public right-of-way by a lessee shall be deeded to the city.

11. Lease term. Lease terms will be limited to the shortest practical time commensurate with capital investment in permanent improvements to be made by the lessee following state law.
12. Audits. The city may audit all percentage leases in the first year of operation to establish proper reporting procedures and at least once every three years afterwards. More frequent audits may be made if appropriate. The city shall reserve the right to audit all other leases and agreements if determined warranted by the director of finance or city manager. Absent a city audit, a lessee shall submit an annual report certified by a certified public accountant each year within 30 days of the anniversary date of the lease.
13. Cancellation clauses. Short-term leases shall not have cancellation clauses unless they are month-to-month leases.

I. Option agreements

1. Option to sell. When properties have been put up for sealed or oral bids and bids have not either been received or been rejected by the city, the city manager may enter an option agreement of up to 90 days with someone interested in purchasing surplus property. Any such option agreement shall be subject to the following minimum terms:
 - a. Shall not exceed 90 days without approval of the city council;
 - b. Shall provide time for the prospective buyer to perform due diligence to see if the property is feasible for his/her purposes;
 - c. Shall require a minimum non-refundable deposit of not less than 10 percent of the value of the property per month of the option agreement;
 - d. Shall require forfeiture of the deposit if the property is not placed in escrow within 90 days;
 - e. Shall set the minimum purchase price of the property at not less than the appraised fair market value, based on an appraisal prepared within six months of the date escrow was opened, and shall provide a non-refundable deposit in an amount agreed upon by the city council and set the length of escrow;
 - f. Shall disclose all realtors involved, if any; and
 - g. Shall disclose the name of the buyer and his/her intended use of the property.

J. Real estate listing

It will be the presumption that the city will act as its own agent and that any real estate agent or broker will represent the buyer. When it is determined that any real property owned by the city is to be disposed of by sale, the city council may authorize a written listing contract with a real estate broker licensed by the state of Michigan.

Selecting a real estate broker to provide real estate services will be accomplished through a competitive recruitment process based on the type of property to be marketed, relevant

experience, knowledge of the community, proposed commission, qualifications, necessary licenses in good standing, and demonstrated competence.

Absent a real estate listing, the council may still designate certain surplus property for sale or lease for which the city would pay a partial commission upon the successful conclusion of a sale or lease. The agent or broker that procures a buyer or lessee for the city would be eligible for a commission. A commission would not be paid for subleases and existing leases on city property.

While the city will allow agent or broker participation on designated properties in the sale and lease of land not covered by contract, inherent in this is the right of the city to solicit and obtain sales or leases through in-house capabilities. There will not be any discount in land values or lease rates due to the absence of a commission to real estate brokers.

K. Time of payment of a real estate commission for a sale

In the event an agent or broker covered by contract with the city gets a buyer who submits either the highest bid or an offer to purchase based on the fair market value of the parcel and the sale is made and completed in due course, the commission provided in the contract will be paid to the agent or broker by the escrow agent from the sales proceeds.

L. Real estate commissions

Unless there is a written contract between a real estate agent or broker and the city, the city shall represent itself and practice good business practices in all real estate transactions. The city may pay a real estate brokerage fee for qualified representation of a selected lessee or purchaser of city property. While the amount of rental or purchase price offered is a criterion for selecting a lessee or purchaser in competitive situations, the selection will be based on the highest net rental or net purchase price, without taking into account any brokerage fees involved in the competition.

M. Real estate agent or broker certification

For any sale or lease involving a real estate agent or broker not under contract to the city on designated properties, the city shall require the following:

1. That the buyer or lessee certify that the real estate agent or broker is his/her agent in the transaction and has performed a service and procured the sale or lease.
2. That the real estate agent or broker certify that he or she is not an employee of the lessee or buyer.

N. Use of proceeds

Unless otherwise directed by the city council, proceeds from sales or leases shall be assigned as follows:

1. To enterprise accounts, if the property was purchased using ratepayer funds.
2. To the general fund
3. To a program or grant that requires refunding if the land was purchased using a source of money with that type of restriction.

O. Costs to sell, lease, and market surplus properties

Unless otherwise directed, the costs to sell, lease, exchange, or market surplus properties will be charged to the fund to which the proceeds of a sale would go.

APPENDIX A

Owosso from time to time will have parcels that are vital to community and economic development for which proposals should be sought and examined by preestablished criteria. This will normally involve redevelopment projects. In such circumstances, Owosso will follow a process similar to the following.

1. Preparation of a site development program

Illustrative development plans and guidelines are prepared by the city that reflect and address:

- economic parameters and feasibility
- community goals and design criteria
- physical capacity

There may be extensive public participation in the process to address critical issues such as height, orientation, parking, traffic, general design/materials, and community character. Open workshops or charettes may be held early in the process. Typically, this task includes the services of a planning/design firm, civil engineer, and traffic planners and often the services of a development advisor. The result should be a project that is economically feasible and physically reasonable and that meets the goals of Owosso.

Development guidelines will be crafted that give prospective developers direction but still allow the community to tap the creativity and resourcefulness of the private sector.

2. Address development readiness of the site

There must be realistic assessment of factors that may impede development and may be difficult for the developer to address. Issues may include ownership holdouts, demolition, environmental contamination, soil conditions, storm water requirements, infrastructure status and responsibility, title exceptions and other similar problems.

Who is in the best position to address these issues must be evaluated and action taken to resolve the issues. Decisions must be made as to the role the developer may have to play in their resolution. At the very least the key issues should be disclosed.

3. Prepare request for qualifications and proposals

A two-step process will usually be followed, first seeking qualifications (RFQ), then requesting proposals (RFP) from only a shortlist of not more than five qualified firms or teams. The request for qualifications provides full background information on the project and seeks the experience, track record, financial capacity, and references of development teams.

The two-step process is followed because Owosso wants to advertise sale of land and other development opportunities. This creates a “beauty contest” in the eyes of qualified developers. Firms may hire an architect to prepare attractive exhibits, whether or not they represent a feasible plan or the firm has the financial and development capability to deliver. As a result, many best qualified firms will avoid a request for full proposals that is open to all and for which they cannot reasonably assess the odds of success. The cost of a full proposal is too great to incur unless there is a reasonable chance of success.

4. Review qualifications and determine a short list

Qualifications will be reviewed and a short list selected. The review of qualifications will include assessing the relevance and depth of the background of each team, a confidential review of

financial capacity, and interviews of references. A short list will be made. This may require interviews and staff/ consultant review.

5. Solicit/receive proposals from a short list

Meetings will be held with short-listed teams to provide additional background information and to answer questions that may arise. Other discussions also may occur during this period to help the developers fully understand the municipality's goals. The full proposals will include conceptual site and building plans, financial analysis, requests for city participation, and proposed payments to the city. Each developer will approach the project differently.

6. Evaluate proposals

Proposals will be evaluated in terms of overall quality, financial proposal, responsiveness, level of commitment from financing sources and tenants, etc. This is sometimes a summary and comparison or may be more evaluative. In either case, this provides information for use in interviews of the teams.

7. Interviews

Developers will publicly present their proposals to the city council.

8. Selection

Results of the interviews and public comment, if any, then will be considered along with the evaluation of the proposal as for quality, character, track record, ease of working relationship, price offered, and other factors.

9. Negotiation of redevelopment agreement

Following selection, Owosso will negotiate the business terms of the redevelopment agreement for the project. This includes both financial terms and the responsibilities of parties. City and special legal counsel may be involved. A redevelopment agreement is the basis for the public-private partnership that occurs. It will be far more than a land sale contract to ensure that Owosso gets what it wants. The typical redevelopment agreement will include:

- Approved development
- Time of performance
- Protection on undeveloped land
- Acceptable tenants
- Payments to city
- Excess profit sharing
- Financing terms and public financial role, if any
- Requirements for closing, such as full funding, in balance
- Review and monitoring provisions

This is the opportunity to provide for requirements that reflect the desire to steward the land and achieve key public goals. Some may impact the economics of the project and value of the land, but if they are affordable and acceptable, the redevelopment agreement and covenants that run with the land are the mechanisms to do so and must be done before transfer.

I hereby certify that the foregoing document is a true copy of action taken by the Owosso City Council at the regular meeting of November 21, 2011.



Amy K. Kirkland, City Clerk