
ORDINANCE NO. 2114

**AN ORDINANCE AUTHORIZING ADVERTISEMENT FOR THE SALE
OF REAL ESTATE OWNED BY THE CITY OF NOKOMIS, ILLINOIS**

ADOPTED BY THE

CITY COUNCIL

OF THE

CITY OF NOKOMIS, ILLINOIS

THIS 15TH DAY OF FEBRUARY, 2024

Published in pamphlet form by the authority of the City Council of the City of
Nokomis, Montgomery County, Illinois, this 15 day of February, 2024.

CITY OF NOKOMIS, ILLINOIS

Ordinance No. 2114

AN ORDINANCE AUTHORIZING ADVERTISEMENT FOR THE SALE OF REAL ESTATE OWNED BY THE CITY OF NOKOMIS, ILLINOIS

WHEREAS, the City of Nokomis, Illinois (the “City”) an Illinois non-home rule municipal corporation pursuant to Article VII, § 8 of the 1970 Illinois Constitution, organized and operating under the Illinois Municipal Code (65 ILCS 5/1-1-1, *et seq.*); and

WHEREAS, “[t]he corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities” (65 ILCS 5/1-2-1); and

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/11-76-1, provides that the corporate authorities of a municipality may, by ordinance passed by three-fourths of the corporate authorities then holding office, authorize the sale of public real estate when, in the opinion of the corporate authorities, the real estate is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the city or village; and

WHEREAS, the City is the owner of a tract of real estate situated in the City of Nokomis, Montgomery County, Illinois, which is legally described as follows:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), and Fourteen (14) in Block One (1) in Miller’s Division of Blocks 5, 6, 7, 18, 19, 20, 21, 22, and Part of Blocks 9 and 7 in Randall and Miller’s Subdivision in the Town of Nokomis.

P.I.N.: 08-22-403-001

(hereinafter, “Parcel 1”); and

WHEREAS, the City obtained title to Parcel 1 via Quit Claim Deed recorded at Book 170, Page 11; and

WHEREAS, the corporate authorities have determined that a portion of Parcel 1, which is more specifically described below as part of the “Real Estate”, is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the City of Nokomis; and

WHEREAS, the City is also the owner of a tract of real estate situated in the City of Nokomis, Montgomery County, Illinois, which is legally described as follows:

Block One (1) except Lot One (1), Two (2), Three (3), Four (4). Five (5), Six (6), Seven (7). Eight, (8), Nine, (9). Ten (10), Eleven (11), Twelve (12), Thirteen (13), and Fourteen (14); and all of Block Two (2); and all of Block Three (3) except lots eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24). twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and thirty-two (32); and all of Block Four (4); all of said lots and blocks being situated in Miller's Division of Blocks Five (5), Six (6), seven (7), eighteen (18). nineteen (19), twenty, (20). twenty-one (21), twenty-two (22), and part of Blocks nine (9) and seventeen (17) in Randall and Miller's Sub-division, in the Town of Nokomis, Montgomery County, Illinois.

P.I.N.: 08-22-454-012

(hereinafter, "Parcel 2"); and

WHEREAS, the City obtained title to Parcel 2 via Warranty Deed recorded at Book 204, Page 559; and

WHEREAS, the corporate authorities have determined that a portion of Parcel 2, which is more specifically described below as part of the "Real Estate", is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the City of Nokomis; and

WHEREAS, the corporate authorities have determined that it is in the best interest of the City of Nokomis that a portion of Parcel 1 and of Parcel 2, comprising approximately 2.17± acres, be sold together upon receipt of sealed bids, in accordance with the procedures set forth in the Illinois Municipal Code, 65 ILCS 5/11-76-2; and

WHEREAS, that portion of Parcel 1 and that portion of Parcel 2 to be sold together is legally described as follows:

Part of Blocks One (1) and Two (2) in Miller's Division to the City of Nokomis, Montgomery County, Illinois. Beginning at an iron pin set on the South Right-of-Way line of State Route 16 and Nineteen (19) feet West of the West line of Hargraves addition to the city of Nokomis; thence South 01°35'08" East on the West line of an existing alley for a distance of 395.00 feet to an iron pin set; thence South 88°49'06" West, a distance of 479.40 feet to an iron pin set on the Southerly Right of Way line of State Route 16; thence North 49°10'06" East. 619.02 feet on the said Southerly Right-of-Way line to the Point of Beginning, containing 2.17 acres more or less.

(hereinafter, the "Real Estate"); and

WHEREAS, the Real Estate is currently vacant and unimproved, and it is currently not being used by the City; and

WHEREAS, the corporate authorities have determined that the Real Estate should be sold in its "AS IS" condition, with no representation or warranties being made by the City, and sold for cash only; and

WHEREAS, the corporate authorities have further determined that the sale of the Real Estate should be sold subject to the relocation of two (2) water mains located on the Real Estate; and

WHEREAS, the form of contract to be executed is attached hereto as "**Exhibit A**", and the successful bidder shall execute a contract in substantially that form; and

WHEREAS, the corporate authorities have further determined that it is necessary and desirable to the public interest that the City retain a perpetual nonexclusive easement over, across, upon, under, and through the Real Estate for an existing water line; and

WHEREAS, the form of easement to be retained is attached hereto as "**Exhibit B**" and shall be delivered in substantially that form; and

WHEREAS, the corporate authorities hereby find that the sale of the Real estate under the above-stated conditions to be in the best interest of the citizens of the City; and

WHEREAS, the corporate authorities have reviewed the document entitled "NOTICE OF SALE OF PROPERTY OWNED BY THE CITY OF NOKOMIS, IL AND INVITATION TO BID THEREON", a true and complete copy of which is marked as "**Exhibit C**", attached hereto, and incorporated by reference as if fully set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NOKOMIS, MONTGOMERY COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: The above recitals are incorporated herein and made a part hereof.

SECTION 2: The purpose of this Ordinance is to authorize and direct the sale and disposition of the Real Estate and to authorize and direct the Mayor, the City Clerk, and the City's attorneys to do all things and take all actions necessary and appropriate to sell the Real Estate and effectuate the intent of this Ordinance.

SECTION 3: The Mayor or his designee is hereby authorized and directed to publish notice of the City's proposal to sell and to advertise for bids for the purchase of the Real Estate, in accordance with the procedures set forth in the Illinois Municipal Code, 65 ILCS 5/11-76-2.

SECTION 4: The City shall sell the Real Estate by receipt of sealed bids for the same, subject to the bidder's or bidders' strict compliance with the conditions stated in this Ordinance. Sealed bids will be received by the City until 12:00 Noon on Monday, April 8, 2024. Any and all bids received after said date and time will be rejected. Sealed bids will be opened and read aloud at the regularly scheduled City Council meeting at 7:00 p.m. on Monday, April 8, 2024, at City Hall, located at 22 South Cedar Street, Nokomis, Montgomery County, Illinois.

SECTION 5: The City Clerk is hereby directed to cause to be published in The Journal-News, at the first opportunity following the passage of this Ordinance, and at least once per week for 3 successive weeks, the "NOTICE OF SALE OF PROPERTY OWNED BY THE CITY OF NOKOMIS, IL AND INVITATION TO BID THEREON", substantially in the form attached hereto and marked as "**Exhibit C**".

SECTION 6: The City Council may accept the high bid or any other bid determined to be in the best interests of the City by vote of three-fourths of the corporate authorities then holding office, and may reject any and all bids by a majority vote of those holding office. The City Council further reserves the right to review and study any and all bids and to make a contract award within forty-five (45) days after the bids have been publicly read.

SECTION 7: The form of contract to be executed by the successful bidder is attached hereto as “**Exhibit A**”. The Mayor shall be authorized to negotiate the final form of contract to be executed. The Mayor or his designee, and the City’s attorneys as may be required, are hereby further authorized and directed to draft, execute, and complete any and all documents deemed necessary to effectuate the intent of this Ordinance. The City Clerk is hereby authorized and directed to attest to, countersign, and affix the seal of the City to all such documents.

SECTION 8: The officers and employees of the City shall take all actions reasonably necessary or required to carry out and give effect to the intent of this Ordinance and shall otherwise consummate the sale of the Real Estate and shall take all actions necessary in conformity therewith, including, but not limited to, the execution and delivery of all documents required to be delivered in connection with the transaction contemplated herein and approving the expenditure of all necessary funds to consummate the sale of the Real Estate.

SECTION 9: All past, present, and future acts and doings of the officials of the City that are in conformity with the purpose and intent of this Ordinance are hereby, in all respects, ratified, approved, authorized, and confirmed.

SECTION 10: If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Ordinance, which are hereby declared to be separable.

SECTION 11: All ordinances, resolutions, motions, or parts thereof in conflict with this Ordinance are hereby superseded.

SECTION 12: A full, true, and complete copy of this Ordinance shall be published in pamphlet form.

SECTION 13: This Ordinance shall be in full force and effect from and after its passage *by a vote of at least three-fourths of the corporate authorities now holding office*, approval, and publication as provided by law.

PASSED this 15th day of February, 2024, by roll call votes as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>	<u>Present</u>
Commissioner Arkebauer			X	
Commissioner Morris	X			
Commissioner Glenn	X			
Commissioner Stauder	X			
Mayor Goldsmith			X	

APPROVED by the Mayor of the City of Nokomis, Illinois this 15 day of February, 2024.

ATTEST:



MAYOR



CITY CLERK

STATE OF ILLINOIS)
COUNTY OF MONTGOMERY) SS.
CITY OF NOKOMIS)

CERTIFICATE

I certify that I am the duly appointed and acting City Clerk of the City of Nokomis, Montgomery County, Illinois, and, as such, am the keeper of records and seal thereof; that the foregoing is a true, complete, and correct copy of Ordinance No. 2114 of said City; that said Ordinance, which is

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was passed by the City Council of the City of Nokomis, Montgomery County, Illinois, by ye and nay vote on the 15th day of February, 2024; that said Ordinance was passed ***by a vote of at least three-fourths of the corporate authorities now holding office***; that said Ordinance was approved by the Mayor on the 15 day of February, 2024; and that said Ordinance was then deposited in the office of the City Clerk of said City and filed therein; and that the same was recorded in the Record of Ordinances of said City.

I further certify said Ordinance provided by its terms that it should be published in pamphlet form; that the pamphlet form of said Ordinance, including the Ordinance and a cover sheet thereof, was prepared; that a copy of such Ordinance was posted in the Nokomis City Hall, commencing on the 15 day of February, 2024, to continue for at least ten (10) days thereafter; and that copies of such Ordinance were also available for public inspection upon request in the office of the City Clerk.

DATED at Nokomis, Illinois, this 15 day of February, 2024.

(SEAL)



City Clerk

“EXHIBIT A”

CONTRACT FOR SALE OF PROPERTY OWNED BY THE CITY OF NOKOMIS, IL

THIS PURCHASE AGREEMENT (“Agreement”) dated _____, is made and entered into by and between **THE CITY OF NOKOMIS, ILLINOIS, an Illinois municipal corporation** (hereinafter referred to as "Seller"), and _____ (hereinafter referred to as "Buyer").

1. **Subject Property.** Buyer agrees to purchase, and Seller agrees to sell and convey to Buyer, subject to all the terms of this Agreement, the real estate legally described on **Exhibit 1** attached hereto and incorporated herein by reference (the “Subject Property”), together with all buildings and other improvements situated thereon, and all fixtures and other property affixed thereto, all on the terms and conditions contained herein.

2. **Purchase Price.** The purchase price of the Subject Property shall be _____ and 00/100 Dollars (\$_____.00) (the “Purchase Price”), which shall be paid by cashier’s or certified check at Closing (hereinafter defined).

3. **Closing Date.** The closing of the transactions contemplated by this Agreement (the “Closing”) shall occur within 30 days after approval of this Agreement by the corporate authorities (the “Closing Date”).

4. **Survey.** Seller has no obligation to provide Buyer with a survey of the Subject Property, other than the Plat of Survey previously prepared by Beyers Land Surveying, PLLC on February 10, 2024. Buyer may elect to purchase a survey at his/her/its own expense, which shall in no event delay Closing.

5. **Title.** Seller represents and warrants that it is the record owner of the fee simple interest associated with the Subject Property. Seller has no obligation to provide Buyer with a title commitment or an owner’s policy of title insurance covering the Subject Property. Buyer may elect to purchase same at his/her/its own expense, which shall in no event delay Closing or cause Closing to occur other than as set forth in this Agreement. Buyer has no right to raise any objection to, nor does Seller have any obligation to eliminate or modify, any easement, lien, imposition, encumbrance, restriction, condition, covenant, or any other matter with respect to the Subject Property, whether of record or not, or whether evidenced by a title commitment, survey, or otherwise. Buyer hereby acknowledges and agrees that all such matters are permitted encumbrances hereunder and that conveyance of the Subject Property pursuant to this Agreement will be subject thereto.

6. **Property Condition.**

(a) Buyer, by executing this Agreement, acknowledges that Seller, except as provided in Section 5 above, has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past or present or future, of, as to, concerning, or with respect to:

(i) The value, nature, quality, or condition of the Subject Property, including, without limitation, the water, soil, and geology;

(ii) Any income to be derived from the Subject Property;

(iii) The suitability of the Subject Property for any and all activities and uses which Buyer may conduct or hope to conduct thereon;

(iv) The compliance of or by the Subject Property or its operation with any laws, rules, ordinances, or regulations of any applicable governmental authority or body;

(v) The title, description, possession, habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Subject Property or any part thereto;

(vi) The manner or quality of the construction or materials, if any, incorporated into the Subject Property;

(vii) The manner, quality, state of repair, or lack of repair of the Subject Property or any portion thereof or any improvements thereto;

(viii) The existence, quality, nature, adequacy, or physical condition of any utilities serving the Subject Property; or

(ix) Any other matter with respect to the Subject Property and, specifically, that Seller has not made, does not make, and specifically disclaims any representations regarding compliance with any environmental protection, pollution, or land use laws, rules, regulations, orders, or requirements, including, without limitation, the disposal or existence, in or on the Subject Property or any part thereof, of any hazardous materials;

(b) Buyer has fully inspected the Subject Property to his/her/its satisfaction. The conveyance of the Subject Property is "AS IS" and "WITH ALL FAULTS", and Seller has no obligation to alter, repair, or improve the Subject Property or any portion thereof or any improvements thereto. Buyer has made, will make, or hereby waives all inspections of the Subject Property deemed necessary or appropriate by Buyer to determine the Subject Property's value and condition, including, without limitation, inspections for the presence of asbestos, pesticide residues, underground storage tanks, hazardous waste, and any other hazardous material, and all investigations to determine whether any portion of the Subject Property lies within any flood hazard area as determined by the U.S. Army Corps of Engineers or other applicable authority. Buyer's inspection of the Subject Property or waiver thereof relieves Seller of any liability to Buyer as a result of any environmental hazard on or to the Subject Property, and Buyer hereby accepts all liability therefor as between Seller and Buyer and indemnifies and holds Seller harmless from and against any and all claims, liabilities, demands, or actions incident to, resulting from, or in any way arising out of such hazard. This indemnity shall survive closing and shall not be merged therein.

(c) ***Buyer also acknowledges that the sale of the Subject Property shall be subject to the City's reservation of a right to relocate two (2) water mains. The Buyer's obligations as set forth in this paragraph shall survive Closing.***

(d) No warranty has arisen through trade, custom, or course of dealing with Seller.

7. Conditions to Closing.

(a) Buyer's Conditions. Buyer's obligation to consummate the transactions contemplated in this Agreement and pay the Purchase Price and accept title to the Subject Property shall be subject to the following conditions precedent on and as of the Closing Date, or the waiver thereof by the Buyer, which waiver shall be binding upon Buyer only to the extent made in writing and dated as of the Closing Date:

(i) A deed in the manner and form agreed upon by the parties hereto, duly executed and acknowledged by Seller; and

(ii) Such affidavits and other documents as may be required in connection with the conveyance of the Subject Property to Buyer.

(b) Seller's Conditions. Seller's obligation to consummate the transactions contemplated in this Agreement and convey the Subject Property to Buyer shall be subject to Buyer's delivery of the Purchase Price, subject to adjustment of such prorations set forth in this Agreement, as well as Buyer's execution and delivery at Closing of the Easement Agreement attached hereto as "Exhibit B".

8. Closing Prorations. Each of Buyer and Seller agree to pay their own respective attorneys' fees incurred in connection with the negotiation, preparation, and consummation of the transactions contemplated hereby. Buyer shall bear the cost of recording the Quit Claim Deed. Except as is otherwise provided herein, all closing costs, transfer taxes, and costs of the title company, if any, inclusive of Buyer's and Seller's customary closing charges, shall be borne by Buyer. All prorations shall be made as of the Closing Date with tax proration projected from latest available tax bill, which proration shall be final as of Closing. Any installments of special assessments due and payable prior to Closing shall be paid by Seller. Any installments of special assessments which are a lien on date of closing but are due and payable after Closing shall be paid by Buyer. Buyer shall be responsible for any tax transfer stamps.

9. Indemnification.

(a) By Buyer. In addition to and not in lieu, place, stead and/or substitution of any other indemnity set forth elsewhere herein, Buyer shall indemnify, save, protect, defend, and hold harmless Seller and its employees, members, managers, shareholders, officers, directors, and agents, from and against all liabilities, claims, demands and causes of action of any nature whatsoever ("Claims") arising out of Buyer's ownership of, and Buyer's activities conducted on, the Subject Property subsequent to the time of Closing, and/or Buyer's breach of its obligations,

representations, warranties, or covenants hereunder. Buyer further agrees to pay any reasonable attorney's fees and expenses of Seller arising from its indemnification obligation hereunder. This covenant shall survive the closing of the transactions contemplated by this Agreement.

(b) Method of Indemnification. In the event that any claim (hereinafter "Indemnitee's Claim") which is indemnified against by or under any term, provision, section or paragraph of this Agreement is made against or received by any indemnified party (hereinafter "Indemnitee") hereunder, said Indemnitee shall notify the indemnifying party (hereinafter "Indemnitor") in writing within ninety (90) calendar days of Indemnitee's receipt of written notice of said Indemnitee's Claim; provided, however, that Indemnitee's failure to timely notify Indemnitor of Indemnitee's receipt of an Indemnitee's Claim shall not impair, void, vitiate and/or invalidate Indemnitor's indemnity hereunder nor release Indemnitor from the same, which duty, obligation and indemnity shall remain valid, binding, enforceable and in full force and effect so long as Indemnitee's delay in notifying Indemnitor does not, solely by itself, directly and materially prejudice Indemnitor's right or ability to defend the Indemnified Claim. Upon its receipt of any or all Indemnitee's Claim(s), Indemnitor shall, in its sole, absolute and unreviewable discretion, diligently and vigorously defend, compromise or settle said Indemnitee's Claim at Indemnitor's sole and exclusive cost and expense and shall promptly provide Indemnitee evidence thereof within fourteen (14) calendar days of the final, unappealable resolution of said Indemnitee's Claim. Upon the receipt of the written request of Indemnitee, Indemnitor shall within five (5) calendar days provide Indemnitee a true, correct, accurate and complete written status report regarding the then current status of said Indemnitee's Claim. Prior to an Indemnification Default (as defined herein), Indemnitee may not settle or compromise an Indemnitor's Claim without Indemnitor's prior written consent. Failure to obtain such consent shall be deemed a forfeiture by Indemnitee of its indemnification rights hereunder. In the event that Indemnitor fails or refuses to indemnify, save, defend, protect or hold Indemnitee harmless from and against an Indemnitee's Claim and/or to diligently pursue the same to its conclusion, or in the event that Indemnitor fails to timely report to Indemnitee the status of its efforts to reach a final resolution of an Indemnitee's Claim, on seven (7) calendar days prior written notice to Indemnitor during which time Indemnitor may cure any alleged default hereunder, the foregoing shall immediately, automatically and without further notice be an event of default hereunder (an "Indemnification Default") and thereafter Indemnitee may, but shall not be obligated to, immediately and without notice to Indemnitor, except such notice as may be required by law and/or rule of Court, intervene in and defend, settle and/or compromise said Indemnitee's Claim at Indemnitor's sole and exclusive cost and expense, including but not limited to attorneys' fees, and, thereafter, within seven (7) calendar days of written demand for the same Indemnitor shall promptly reimburse Indemnitee all said Indemnitee's Claims and the reasonable costs, expenses and attorneys' fees incurred by Indemnitee to defend, settle or compromise said Indemnitee's Claims plus interest thereon from the date incurred until paid in full at the then published prime rate announced from time to time by the Wall Street Journal plus three (3%) percent.

10. Brokerage Commissions. Seller and Buyer warrant and represent to the other that it has not used any broker and to the best of either party's knowledge there is no entity entitled to a commission for the purchase and sale of the Subject Property.

11. Default. If Seller fails to perform any of its obligations hereunder, Buyer's exclusive remedy for such default is termination of this Agreement by written notice thereof. In no event shall Seller be liable to Buyer for any actual, punitive, speculative, or consequential damages. If Buyer fails to perform any of its obligations hereunder, Seller, in its sole and absolute discretion, may either (i) terminate this Agreement by written notice to Buyer, or (ii) bring a claim to enforce specific performance of this Agreement.

12. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered (i) upon the delivery (or refusal to accept delivery) by messenger or overnight express delivery service (or, if such date is not on a business day, on the business day next following such date), or (ii) on the third (3rd) business day next following the date of its mailing by certified mail, postage prepaid, at a post office maintained by the United States Postal Service, or (iii) upon the receipt by facsimile transmission or e-mail as evidenced by a receipt transmission report if requested by the recipient as follows:

if to Buyer: _____

if to Seller: City of Nokomis
Attn: City Clerk
22 South Cedar Street
Nokomis, IL 62075

with a copy to: Christopher E. Sherer
Giffin, Winning, Cohen & Bodewes, P.C.
900 Community Drive
Springfield, IL 62703

Either party may, by notice given as aforesaid, change the address or addresses, or designate an additional address or additional addresses, for its notices; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

13. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and may not be modified or canceled except pursuant to the terms hereof or an instrument in writing signed by the parties hereto. The Exhibits annexed hereto are hereby incorporated herein by reference as though fully set forth herein. This Agreement may not be modified or amended except in writing signed by the parties hereto. All understandings and agreements heretofore and between the parties are merged in this Agreement and all Exhibits and Schedules attached hereto, which alone fully and completely express the agreement of the parties hereto with respect to the subject matter hereof, and which supersede all prior negotiations, representations or agreements pertaining to the subject matter hereof, either oral or written.

(b) Waiver. No waiver of any term, provision or condition of this Agreement, shall be

deemed to be or be construed as a further or continuing waiver of any such term, provision or condition of this Agreement. No failure to act shall be construed as a waiver of any term, provision, condition or rights granted hereunder.

(c) Dispute Resolution; Attorney's Fees. The venue for any litigation involving this Agreement shall be in the Circuit Court of the Fourth Judicial Circuit, Montgomery County, Illinois. The law of this Agreement shall be the law of the State of Illinois. In any controversy arising out of the interpretation or performance of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs incurred from the other party; provided, however, that Seller's liability, if any, for court costs and attorneys' fees shall not exceed \$500.00 in the aggregate.

(d) Headings. The headings of the various Sections of this Agreement have been inserted only for the purposes of convenience, are not part of this Agreement and shall not be deemed in any manner to modify, explain, qualify or restrict any of the provisions of this Agreement.

(e) Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had executed the same document. All such counterparts shall be construed together and shall constitute one instrument.

(f) Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

(g) No Third Party Beneficiaries. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any party or entity not a party to this Agreement.

(h) Further Assurances. Each of Seller and Buyer shall provide to the other such further assurances as may reasonably be required hereunder to effectuate the purposes of this Agreement and, without limiting the foregoing, shall execute and deliver such affidavits, certificates and other instruments as may be so required hereunder so long as the same shall not materially increase the liability of the party so executing and delivering said instrument.

(i) Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but, each term and provision shall be valid and be enforced to the fullest extent permitted by law.

(j) Usage. All nouns and pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons, firm or firms, corporation or corporations, entity or entities or any other thing or things may require, or "any" shall mean "any and all"; "or" shall mean "and/or" "including" shall mean "including without limitation".

(k) No Strict Construction. The language used in this Agreement is the language

chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any of the parties hereto.

(l) Survival of Representations and Warranties. The representations and warranties made by Seller and Buyer as stated in Paragraph 7 herein shall survive the closing of the transactions contemplated by this Agreement.

(m) Signatures. A facsimile or PDF copy sent via email shall be deemed an original.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this

(insert date)

SELLER:

CITY OF NOKOMIS, ILLINOIS,
an Illinois municipal corporation

By: _____
Its Mayor

ATTEST:

By: _____
City Clerk

BUYER(S):

EXHIBIT 1

**Subject Property
Legal Description**

Part of Blocks One (1) and Two (2) in Miller's Division to the City of Nokomis, Montgomery County, Illinois. Beginning at an iron pin set on the South Right-of-Way line of State Route 16 and Nineteen (19) feet West of the West line of Hargraves addition to the city of Nokomis; thence South $01^{\circ}35'08''$ East on the West line of an existing alley for a distance of 395.00 feet to an iron pin set; thence South $88^{\circ}49'06''$ West, a distance of 479.40 feet to an iron pin set on the Southerly Right of Way line of State Route 16; thence North $49^{\circ}10'06''$ East. 619.02 feet on the said Southerly Right-of-Way line to the Point of Beginning, containing 2.17 acres more or less.

Portions of P.I.N.: 08-22-403 & 08-22-454-012

**“EXHIBIT B”
EASEMENT
AGREEMENT**

Prepared By & Return To:

Christopher E. Sherer
Giffin, Winning, Cohen & Bodewes, P.C.
900 Community Drive
Springfield, IL 62703
(217) 525-1571

FOR RECORDER'S USE ONLY

This EASEMENT AGREEMENT (this “Agreement”) dated as of the date last signed below is entered into by and between _____ (“Grantor(s)”), and **CITY OF NOKOMIS, an Illinois municipal corporation** (“Grantee”; and together with Grantor(s) sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties”).

RECITALS

A. Grantor(s) is the owner of a certain parcel of land in the City of Nokomis, County of Montgomery, and State of Illinois, legally described in **Exhibit A** attached hereto (the “Subject Parcel”); and

B. Grantee desires to receive from Grantor(s) and Grantor(s) desires to grant to Grantee certain easement rights with respect to the Subject Parcel for the purposes described in this Agreement, and subject to the terms and conditions of this Agreement.

AGREEMENTS

NOW, THEREFORE, for and in consideration of Grantee’s payment of Ten and 00/100 Dollars (\$10.00) to Grantor(s) in hand paid, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Grant of Easement.** Grantor(s), for himself/herself/their and his/her/their heirs, trustees, personal representatives, successors and assigns, hereby grants and conveys unto Grantee a perpetual, non-exclusive easement (the “Easement”) over, upon, across, in, through, and under that portion of the Subject Parcel legally described on **Exhibit B**, attached hereto (the “Easement Property”), for the purposes stated herein.

2. **Permitted Use.** The Easement shall be used by Grantee solely for the purposes set forth in Section 2 hereof and for no other purpose whatsoever. The Easement is granted for the purpose of installing, constructing, excavating, operating, accessing, continuing, inspecting, testing, surveying, repairing, maintaining, servicing, improving, renewing, modifying,

supplementing, enlarging, reinstalling, reconstructing, relocating, replacing, and removing over, upon, across, in, through, and under the Subject Parcel (and, all lots, streets, roads, or highways abutting the Subject Parcel) pipes and distribution lines and systems for the transport of water, together with all necessary facilities and appurtenances incident to installing, excavating, operating, repairing, maintaining, improving, modifying, relocating and replacing said pipes and distribution lines, including, without limitation, all pipe, valves, fittings, flanges, utility tracers, markers, and hydrants and other hardware required to convey water, together with the perpetual right of pedestrian and vehicular access, ingress and egress at all reasonable times to and from the Easement Property. Grantee agrees to access the Easements via the shortest and most direct route utilizing the public road, to the extent practical or utilizing Grantee's existing easements.

3. Covenants. It is further covenanted between the Grantor(s) and the Grantee, as follows:

a. That, during the term of the Easement, the Grantor(s) shall not place, erect, construct, or permit a building, structure, or other above or below ground obstruction that may interfere with the purposes for which the Easement is granted.

b. That, following the date of this Agreement, no trees, shrubbery, or other landscaping shall be planted or otherwise placed by the Grantor(s) on the Easement Property during the term of said Easement without first acquiring the Grantee's prior written consent, which consent may be withheld by Grantee's sole and absolute discretion.

c. That Grantor(s) authorize the Grantee to cut, trim, and spray herbicides on trees and shrubbery currently located on the Easement Property, whether aboveground or belowground, where required to properly maintain said water pipes and distribution lines and systems in a manner approved and accepted in the industry. Grantee shall compensate Grantor(s) for all damages sustained by Grantor(s) and caused by Grantee's actions.

d. That all pipes, equipment, systems, and other facilities, installed on or under the above-described lands at the Grantee's expense, shall remain the property of the Grantee, removable at the option of the Grantee.

e. That the Grantor(s) covenants that he/she/they is/are the sole owner(s) of the Subject Parcel; that Grantor(s) is seized of and has the right to convey the Easement, rights, and privileges herein granted; and that the Grantee shall have quiet and peaceable possession, use, and enjoyment of the Easement, rights, and privileges herein granted.

f. That the Grantee shall have the right to remove any improvements, landscaping, or natural foliage located on the Subject Parcel where such removal is reasonably necessary and economical to Grantee's use of the Easement.

g. That no use of the Easement by Grantee and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, and assigns shall violate any applicable law, rule or regulation relating to the Easement.

h. That, to the extent allowed by law, Grantee shall indemnify and hold the Grantor(s) harmless against any claim of liability or loss from personal injury or property damages resulting from or arising out of the negligence or willful misconduct of the Grantee and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, and assigns, except to the extent such claims or damages may be due to or caused in whole or in part by the negligence or willful misconduct of Grantor(s), its employees, contractors, or agents.

i. That, in the event that the terms of this Agreement are violated by Grantor(s), or by the agents or employees or contractors of Grantor(s), then, upon written notice by Grantee to Grantor(s), Grantor(s) shall promptly correct the violation at the expense of Grantor(s).

j. That Grantor(s) reserves all rights attendant to its ownership of the Subject Parcel, including, but not limited to, the use and enjoyment of the Subject Parcel for all purposes not inconsistent with the terms and conditions of this Agreement.

k. That Grantor(s) may grant, create, or suffer any claim, lien, encumbrance, easement, restriction or other charge or exception to title to the Subject Parcel (each, an "Encumbrance") so long as each such Encumbrance is subject to this Agreement and the Easement granted herein.

l. That Grantee shall cause all work conducted with respect to the Easement to be completed free from mechanic's liens and actions filed against the Easement to foreclose on the Easement through a recorded *lis pendens*.

m. That Grantee agrees to use reasonable efforts to maintain the pipes and lines and systems in a good state of repair so that no unreasonable damage will result to adjacent lands of Grantor(s) from use of the Easement by Grantee.

4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, personal representatives, successors and assigns. It is the intention of the Parties that this Agreement and all of the various rights, obligations, restrictions and Easement created in this Agreement shall run with the land and shall inure to the benefit of and be binding upon all future owners, users of any of the Subject Parcel and the Easement, assignees of Grantee and lessees of the Subject Parcel and all persons claiming under them.

5. Notices. All notices required to be given by any of the provisions of this Agreement to a Party, unless otherwise stated, shall be in writing and delivered in person or by a national overnight delivery service (and shall be effective when received, when refused or when the same cannot be delivered) to the appropriate Party at the address set forth below (or at such other address designated in prior writing to the other Party):

To Grantor: Owner of Record

To Grantee: City of Nokomis
22 South Cedar Street
Nokomis, IL 62075

Each Party shall promptly deliver notice to the other Party of changes in address or ownership of the Subject Parcel or ownership interest in this Agreement, as appropriate.

6. Force Majeure. The time for performance by Grantor(s) or Grantee of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor(s) or Grantee, as the case may be.

7. Recording. This Agreement shall be recorded by Grantee at its sole cost and expense.

8. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without reference to its conflict of laws rules. Each Party hereby irrevocably submits to the exclusive jurisdiction of any federal or state court located in Montgomery County, Illinois in connection with any dispute arising out of or in connection with this Agreement. The non-prevailing Party in any litigation in connection with this Agreement shall be responsible for the prevailing Party's reasonable legal fees and expenses. EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

9. Captions and Headings; Exhibits. The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify, or add to the interpretation, construction, or meaning of any provisions of or the scope or intent of this Agreement. The Exhibits hereto (i) are incorporated in this Agreement by reference in their entirety, and (ii) unless expressly otherwise provided herein, shall be prepared by Grantor(s) and shall be subject to Grantee's prior written approval.

10. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits, and remedies provided to either Party by this Agreement, or by any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies, and benefits allowed by law or equity to such Party.

11. Counterparts. This Agreement may be executed in one or more counterparts, and by the Parties in separate counterparts, each of which when executed shall be deemed to be an

original but all of which taken together shall constitute one and the same agreement.

12. Severability. If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the Easement either void or voidable, Grantor(s) agrees that upon the written request of Grantee, Grantor(s) and Grantee shall convert the Easement to a ground lease between Grantor(s), as lessor, and Grantee, as lessee, which ground lease shall (i) permit uses consistent with those set forth in Section 2 hereof, and (ii) otherwise include only those terms and conditions consistent with this Agreement.

13. Entire Understanding and Amendment. This Agreement constitutes the entire understanding between the Parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressed herein. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement signed by both Parties. No waiver of any breach of any terms of this Agreement shall be effective unless made in writing signed by the waiving Party, and no such waiver shall be construed as a waiver of any subsequent breach of that term or of any other term of the same or different nature. The failure of either Party to object to any breach of any term or condition of this Agreement shall not be deemed a waiver of any term or condition of this Agreement and shall not be deemed a waiver of any right or remedy the nonbreaching party may have arising out of the breach, nor shall it be deemed a waiver of its right to subsequently enforce the term or condition.

14. Further Acts. Grantor(s) shall cooperate with Grantee in executing any documents reasonably necessary to protect Grantee's rights under this Agreement or Grantee's use of the Easement and to take such commercially reasonable action as Grantee may reasonably request in writing to effect the intent of this Agreement. All costs associated with obtaining and maintaining all government approvals by Grantee or Grantee's contractors or agents shall be the sole responsibility of Grantee.

15. Relationship of Parties; No Sale. Grantee's status shall be strictly construed as a holder of easement on the Subject Parcel limited to its express rights granted herein. Nothing herein shall be construed to render Grantee a fee interest ownership in or of the Subject Parcel, nor as an actual or constructive transfer of ownership of or a fee interest in the Subject Parcel to Grantee. The Parties expressly intend that for all times and for all purposes, Grantor(s) shall be and remain the sole and exclusive owner of the Subject Parcel during its lawful fee ownership thereof with the full benefits and rights of ownership thereof, subject only to the rights expressly granted to Grantee herein for the duration of the Easement.

16. Singular/Plural Form. It is further understood, whenever necessary, words used in this instrument in the singular shall be construed to read in the plural and that words used in the masculine gender shall be construed to read in the feminine or words used in the neutral gender shall be construed to be read in the masculine or feminine gender, whichever is appropriate.

17. Homestead. The undersigned waives any and all rights under the Homestead Exemption laws of the State of Illinois.

IN WITNESS WHEREOF, the undersigned has set his hand and seal, this ____ day of _____, 2024.

_____, Grantor

STATE OF ILLINOIS)
) SS
COUNTY OF MONTGOMERY)

I, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that _____ is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledge that he signed, sealed and delivered said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal on this ____ day of _____, 2024.

Notary Public

ACCEPTED this _____ day of _____, 2024, by the City of Nokomis, an Illinois municipal corporation, pursuant to authority given by the City Council of said City at a regular meeting of the council.

**CITY OF NOKOMIS, an Illinois
municipal corporation**

ATTEST:

By _____
Dylan Goldsmith, Mayor

Clerk

EXEMPT UNDER THE PROVISIONS OF 35 ILCS 200,
SEC. 31-45(b)(1) Real Estate Transfer Tax Law.

Date Buyer, Seller or Representative

EXHIBIT A

SUBJECT PARCEL:

Part of Blocks One (1) and Two (2) in Miller's Division to the City of Nokomis, Montgomery County, Illinois. Beginning at an iron pin set on the South Right-of-Way line of State Route 16 and Nineteen (19) feet West of the West line of Hargraves addition to the city of Nokomis; thence South 01°35'08" East on the West line of an existing alley for a distance of 395.00 feet to an iron pin set; thence South 88°49'06" West, a distance of 479.40 feet to an iron pin set on the Southerly Right of Way line of State Route 16; thence North 49°10'06" East. 619.02 feet on the said Southerly Right-of-Way line to the Point of Beginning, containing 2.17 acres more or less.

Portions of P.I.N.: 08-22-403 & 08-22-454-012

EXHIBIT B

EASEMENT PROPERTY:

Part of Block's One (1) and Two (2) in Miller's Division to the City of Nokomis, Montgomery County, Illinois. Beginning at an iron pin set on the South Right-of-Way line of State Route 16 and Nineteen (19) feet West of the West line of Hargraves addition to the city of Nokomis; thence South $01^{\circ}35'08''$ East on the West line of an existing alley for a distance of 25.83 feet; thence South $49^{\circ}10'06''$ West, parallel to the Southerly Right-of-Way line of State Route 16 a distance of 83.66 feet; thence South $40^{\circ}49'54''$ East. 15.00 feet; thence South $49^{\circ}10'06''$ West, parallel to the Southerly Right-of-Way line of State Route 16 a distance of 40.00 feet; thence North $40^{\circ}49'54''$ West, 15.00 feet; thence South $49^{\circ}10'06''$ West, parallel to the Southerly Right-of-Way line of State Route 16 a distance of 454.88 feet; thence South $88^{\circ}49'06''$ West, a distance of 31.34 feet to the Southerly Right-of-Way line of State Route 16; thence North $49^{\circ}10'06''$ East. 619.02 feet on the said South Right-of-Way line to the Point of Beginning.

"EXHIBIT C"

**NOTICE OF SALE OF PROPERTY OWNED BY THE CITY OF NOKOMIS, IL
AND INVITATION TO BID THEREON**

PLEASE TAKE NOTICE THAT the corporate authorities of the City of Nokomis, Montgomery County, Illinois will receive sealed bids for purchase, under the successful bid, of the City's fee simple interest in the following real property:

Part of Blocks One (1) and Two (2) in Miller's Division to the City of Nokomis, Montgomery County, Illinois. Beginning at an iron pin set on the South Right-of-Way line of State Route 16 and Nineteen (19) feet West of the West line of Hargraves addition to the city of Nokomis; thence South 01°35'08" East on the West line of an existing alley for a distance of 395.00 feet to an iron pin set; thence South 88°49'06" West, a distance of 479.40 feet to an iron pin set on the Southerly Right of Way line of State Route 16; thence North 49°10'06" East. 619.02 feet on the said Southerly Right-of-Way line to the Point of Beginning, containing 2.17 acres more or less.

Portions of P.I.N.: 08-22-403 & 08-22-454-012


Said real property is currently vacant and unimproved. The City shall be granted an easement for an existing water line. The successful bidder's purchase will be subject to the relocation of two water mains, which requirements will be specified in the Contract for Sale.

Sealed bids for the purchase of the aforesaid interest in the above-described property are hereby invited and will be received by the City Clerk at 22 South Cedar Street, Nokomis, Montgomery County, Illinois during normal business hours until 12:00 Noon on Monday, April 8, 2024. Said proposals shall be addressed to the City of Nokomis, Attention: City Clerk, 22 South Cedar Street, Nokomis, Illinois, and shall bear the legend: "PROPOSAL – SALE OF UNIMPROVED REAL ESTATE" and the name and address of the bidder. **All bids received after 12:00 Noon on April 8, 2024 will be rejected.**

The aforementioned real property and any structure(s) thereon are being sold "AS IS" without any warranties or representations. The sale is a cash only sale.

All bids received will be publicly opened and read aloud at the regular meeting of the Nokomis City Council at 7:00 p.m. on April 8, 2024, at City Hall, located at 22 South Cedar Street, Nokomis, Illinois. A contract may be awarded to the highest bidder or any other bid found to be in the best interest of the City of Nokomis. The corporate authorities reserve the right to reject any and all bids and to waive any informalities or irregularities in the bidding. The corporate authorities further reserve the right to review and study any and all bids and to make a contract award within forty-five (45) days after the bids have been opened and publicly read.

Copies of the required sales contract and any bidding documents may be obtained in the office of the City Clerk. Please call (217) 563-2514 with any questions.



Mayor
City of Nokomis, Illinois

Date: 2/16/2024