



Board of County Commissioners Agenda Request

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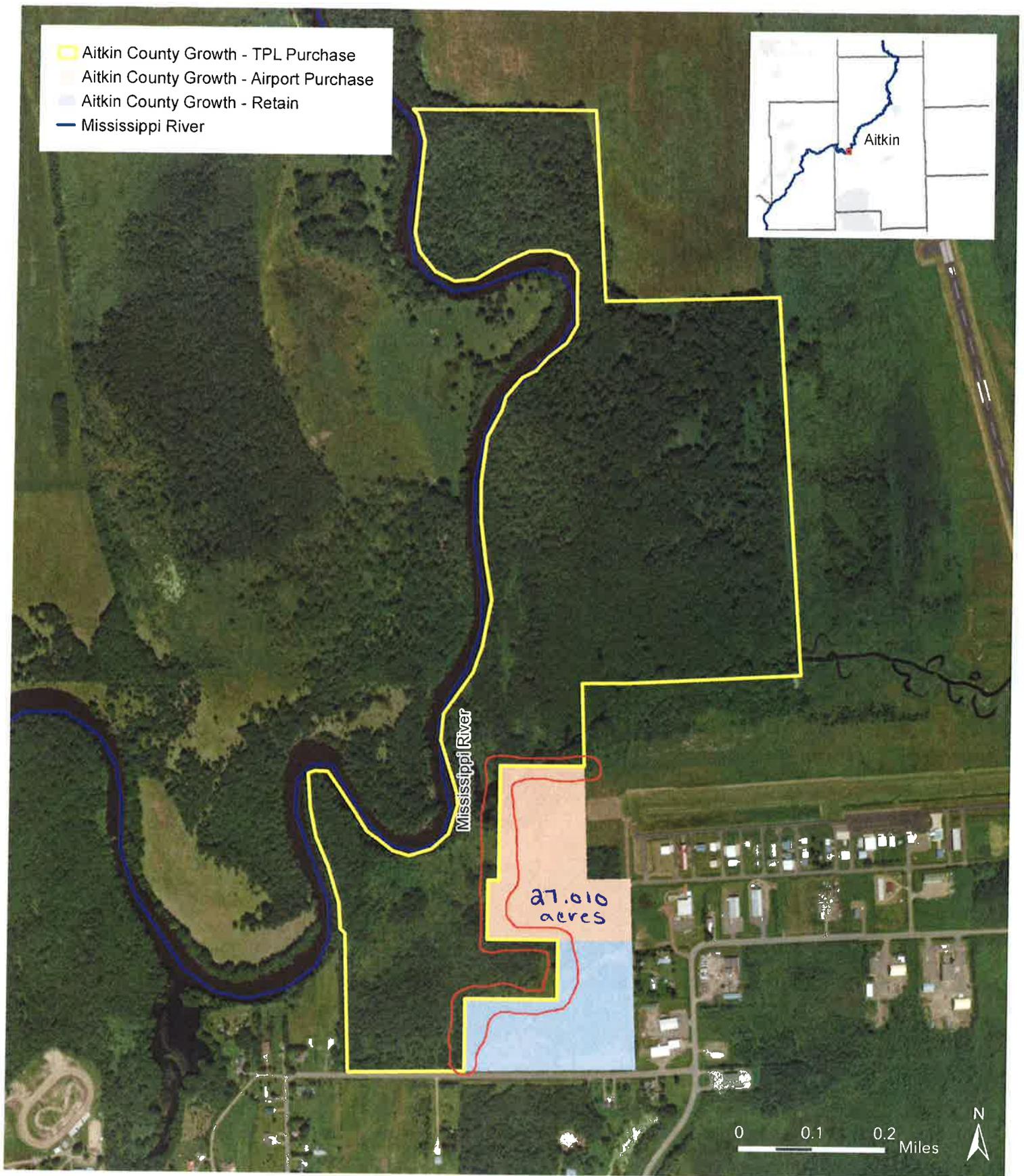
Agenda Item #

Requested Meeting Date: July 10, 2018

Title of Item: Aitkin County Growth Purchase Agreement

<input checked="" type="checkbox"/> REGULAR AGENDA <input type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	Action Requested: <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft)	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing* <small>*provide copy of hearing notice that was published</small>
Submitted by: Jessica Seibert, County Administrator		Department: Administration
Presenter (Name and Title): Jessica Seibert, County Administrator		Estimated Time Needed: 15 minutes
Summary of Issue: <p>On February 13, 2018 the County Board approved the transfer of property from Trust for Public Lands with the exception of property to be retained by Aitkin County Growth for economic development purposes. The Board requested that discussion be held with the Airport Joint Powers Alliance about the potential for the Airport to purchase property located near the end of the current runway for future development. This purchase must be completed prior to the Trust for Public Lands transaction.</p> <p>Attached is a Purchase Agreement between Aitkin County Growth, Inc. and Aitkin County to purchase 27.010 acres of land to be managed by the Airport Joint Powers Alliance. The purchase agreement has been reviewed by County Attorney Jim Ratz. The Airport Commission will pay \$40,000 towards the purchase, however Aitkin County will be the owner of the property.</p>		
Alternatives, Options, Effects on Others/Comments: 		
Recommended Action/Motion: Approve/Deny Purchase Agreement between Aitkin County Growth, Inc. and Aitkin County.		
Financial Impact: Is there a cost associated with this request? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No What is the total cost, with tax and shipping? \$ Is this budgeted? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Please Explain:</i> Purchase price will be paid by the Airport Joint Powers Alliance (Airport Commission).		

Legally binding agreements must have County Attorney approval prior to submission.



Aitkin County Growth Proposed Addition to Aitkin County Forest

Aitkin County, MN



PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is made effective _____, 2018 ("Effective Date") between Aitkin County Growth, Inc., having an address of 316 1st Ave. NW, Aitkin, Minnesota 56431 ("Seller") and the County of Aitkin, a political subdivision of the State of Minnesota having an address of 217 2nd St. NW, Aitkin, Minnesota 56431 ("County").

WHEREAS, Seller is the fee owner of certain real property comprised of 27.010 acres of rural vacant land located in Aitkin County, Minnesota and legally described as follows:

The West 694.00 feet of the East 1024.00 feet of the South 1055.78 feet of Government Lot 1, Section 24, Township 47, Range 27, Aitkin County Minnesota.

AND

The North 385.00 feet of the East 1150.00 feet of the Southeast Quarter of the Northeast Quarter of Section 24, Township 47, Range 27, Aitkin County, Minnesota.

("Property").

WHEREAS, the Airport Commission has resolved to expand the Aitkin airport (Steve Kurtz Field) runway protection zone necessitating acquisition of the Property by the County.

WHEREAS, County has the power of eminent domain to cause a taking of the Property and would initiate a taking of the Property if Seller fails to sell the Property to County.

WHEREAS, in lieu of County exercising its eminent domain power, the County has agreed to buy from Seller, and Seller has agreed to sell to County, the Property pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Seller and County agree as follows:

1. **Sale of Property**. Subject to compliance with the terms of this Agreement, Seller agrees to sell to County, and County agrees to buy from Seller, the following property (collectively, "Property"):
 - (a) **Real Property**. The Property together with (i) all improvements located on the Property, if any, and (ii) all easements and rights benefiting or appurtenant to the Property, including Seller's rights in any vacated or existing public rights of way abutting the property ("Appurtenances") (the Property, Improvements and Appurtenances are collectively the "Real Property"), subject only to Permitted Encumbrances (as defined below).

(b) Warranties. Seller's interests in warranties and guaranties given to, assigned to or benefiting Seller or the Real Property regarding the acquisition, construction, design, use, operation, management or maintenance of the Real Property, if any ("Warranties"). Seller further warrants and represents that Seller will not burden or encumber the Real Property after the parties execute this Agreement.

(c) Memorandum. Seller agrees that the County may record a Memorandum of Purchase Agreement in the Aitkin County Recorder's Office to identify the Property and give public notice that County owns the purchaser's interest in the Property under this Agreement.

(d) Seller shall remove any and all Personal Property located on the Property before the Closing Date. Any Personal Property remaining on the Property after the Closing Date shall become the property of County, and Seller shall have no further rights with respect to such property. The parties understand and agree that upon execution of this Agreement, a memorandum of Agreement shall be executed in recordable form to give public notice of the sale and purchase without revealing the consideration for the conveyance of the Real Property pursuant hereto.

2. Purchase Price and Relocation.

(a) Purchase Price. The Purchase Price for the Property is Forty Thousand and no/100 (\$40,000.00) ("Purchase Price"). The Purchase Price shall be paid by the Airport Joint Powers Alliance. The Purchase Price shall not be paid by County.

(b) Compliance with the Minnesota Uniform Relocation Assistance Act. If Seller and County are unable to reach a mutually acceptable agreement for the purchase and sale of Seller's Property, County has the legal authority to acquire Seller's Property through the exercise of the power of eminent domain. Therefore, County is an "Acquiring Authority" for purposes of the Minnesota Uniform Relocation Assistance Act, Minn. Stat. §§ 117.50 to 117.56 (the "Act"). Minn. Stat. § 117.52 requires County to provide Seller with any relocation assistance services, payments and benefits required by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and the federal regulations adopted pursuant thereto and further interpreted by FAA Order 5100.37B. The applicable federal regulations are found in 49 CFR 24 (the "Regulations"). Seller hereby acknowledges that County has notified Seller of County's interest in acquiring the Property and has provided Seller with notices explaining provisions of the Act and the Regulations and, to the extent applicable, Seller further acknowledges compliance with Minn. Stat. § 117.187 with respect to Minimum Compensation when a transaction results in Seller's relocation. The Purchase Price includes all amounts due pursuant to application of the Minn. Stat. § 117.187.

3. County's Contingencies. County's obligations under this Agreement are contingent upon each of the following occurring on or before the Closing Date (the "Contingency Date"):

(a) Title. The condition of title shall have been found acceptable to County, or been made acceptable, in accordance with the requirements and terms of Section 4 below.

(b) Testing, Investigation. County shall have determined that it is satisfied with the results of all matters disclosed by soil tests, soil borings, engineering inspections, structural and mechanical inspections, surveys, and any and all other reviews, tests or studies of the Property, including tests and inspections relating to asbestos and the adequacy of utilities available to the Property, all such tests, inspections and reviews to be obtained at County's sole cost and expense. Seller shall allow County, and County's agents, access to the Property without charge and at all reasonable times for the purpose of County's investigation and testing the same. In performing such investigation and testing the County shall attempt to minimize any interference with the Property's operation. County shall pay all costs and expenses of such investigation. County shall further repair and restore any damage to the Property caused by County's testing and return the Property to substantially the same condition as existed prior to such entry. County agrees to indemnify and defend Seller from and to hold Seller harmless against any and all claims, causes of action or expenses, including attorneys' fees, relating to or arising from County's presence on the Property prior to the Closing Date and to provide Seller with evidence that County maintains reasonably adequate liability insurance, including contractual liability endorsement or provisions insuring County's potential liability's under this Section 3.

(c) Environmental Investigation. County shall have determined that it is satisfied with the results of all matters disclosed by hazardous waste and environmental reviews of the Property. Within fifteen (15) days after the Effective Date, Seller shall provide copies of all environmental inspection reports in Seller's possession. Seller shall allow County, and County's agents, access to the Property without charge and at all reasonable times for the purpose of County's investigation and testing the same. All such tests, inspections and reviews will be obtained at County's sole cost and expense. In performing such investigation and testing, the County shall attempt to minimize any interference with the operation of the Property. County shall pay all costs and expenses of such investigation and testing. County shall further repair and restore any damage to the Property caused by or occurring during County's testing and return the Property to substantially the same condition as existed prior to such entry.

(d) Document Review. Within fifteen (15) days after the Effective Date, Seller shall make available to County for copying at the Property true and correct copies of all documents relating to the Property including test reports, plans, contracts, permits, any engineering reports, any as-built survey of the Property, and certificates of occupancy for the Property for County's review and analysis, and County shall have determined that it is satisfied with its review and analysis of the documents.

(e) Representations and Warranties. Seller's representations and warranties contained in this Agreement are accurate in all material respects now and will be on the Closing Date as if made upon the Closing.

(f) Material Alterations. Seller shall not make any material alterations or improvements to the Property in the period between the Effective Date of this Agreement and the Closing Date.

If any contingency set forth in this Section 3 has not been satisfied on or before the Contingency Date or the Closing Date, as applicable, then this Agreement may be terminated, at County's option, by written notice from County to Seller. Such notice of termination must be given at any time not later than the Closing Date. Upon such termination, County shall be entitled to receive the Earnest Money, if any, from Seller, and neither party will have any further rights or obligations regarding this Agreement or the Property. All the contingencies set forth in this Section 3 are specifically stated and agreed to be for the sole and exclusive benefit of the County and the County shall have the right to unilaterally waive any contingency by written notice to Seller. Seller agrees to cooperate and assist County with satisfying each of the foregoing contingencies.

4. Title.

(a) Condition of Title. Within thirty (30) days after the Effective Date, Seller shall deliver the abstract of title for the Property to the County, if any. On the Closing Date, Seller shall be required to convey fee title to the Property to County, subject to no liens, easements, encumbrances, conditions, reservations or restrictions other than the Permitted Encumbrances (as defined below).

(b) Title Evidence. The following shall constitute Title Evidence: *Title Insurance Commitment.* County shall obtain, at County's expense, a commitment ("Title Commitment") from the Aitkin County Abstract Company for an Owner's Policy of Title Insurance in the amount of the Purchase Price.

(c) County's Objections. Within twenty (20) days after receiving the Title Commitment, County must make any objections ("Objections") to the form or contents of the Title Evidence to Seller in writing. County's failure to make Objections within such time period waives any County objections to title, except that County shall not be deemed by virtue of failure to so object to have waived any proper objection relating to any Consensual Lien on the Property. Any matter shown on such Title Evidence and not objected to by County (other than such Consensual Liens) shall be a "Permitted Encumbrance" hereunder. As used herein "Consensual Lien" means a mechanic's lien or similar lien attached to the Property voluntarily placed on the Property through Seller's action or inaction.

(d) Seller Cure Period. If County notifies Seller of Objections within the time period set forth above, Seller shall have ten (10) days after receipt of the Objections to notify County whether it will cure the Objection. If Seller notifies County that it will cure the applicable Objection, Seller must use its best efforts to do so within thirty (30) days after Seller notifies County that it will cure the Objection, during which period the Closing will be postponed as necessary. To the extent an Objection can be satisfied by the payment of money, County shall have the right to apply a portion of the cash payable to Seller at the Closing to satisfy such Objection and the amount so applied shall reduce the amount of cash payable to Seller at the Closing. If the Objections are not cured within such thirty (30) day period or if Seller notifies County that Seller will not cure an applicable Objection, County's options will be to do the following: (i) terminate this Agreement by written notice to Seller and the Earnest Money, if any, shall be returned to County; (ii) waive the Objections and proceed to close; or (ii) give the Seller an extension of up to thirty (30)

additional days to correct any Objections. All costs associated with curing the Objections shall be borne by Seller.

5. Closing. The consummation of the purchase and sale transaction contemplated by this Agreement (the "Closing") shall occur during the month of _____, 2018 (the "Closing Date") at _____, Aitkin, Minnesota 56431. Seller shall deliver possession of the Property to County on or before the Closing Date. Neither party may alter the Closing Date or amend this Agreement except in writing as provided in paragraph 16 hereof.
6. Seller's Closing Obligations. On the Closing Date, Seller shall execute and deliver to County the following items which are referred to as "Seller's Closing Documents." Seller's Closing Documents shall be duly executed and, where appropriate, be in recordable form.
 - (a) Deeds. A Warranty Deed (the "Deed") executed by Seller, conveying the Property to County, free and clear of all encumbrances, except the Permitted Encumbrances. The Deed shall contain a "no wells" statement, or if there is a well on the Property, a well certificate shall be completed in the form required by law.
 - (b) Title Policy. A *pro forma* Title Insurance Policy or a suitably marked up Commitment for Title Insurance initialed by the Aitkin County Abstract Company, in the form required by this Agreement.
 - (c) Seller's Affidavit. An Affidavit by Seller indicating that on the Closing Date there are no outstanding, unsatisfied judgments, divorce proceedings, tax liens or bankruptcies against or involving Seller or the Property; that there has been no skill, labor or material furnished to the Property for which payment has not been made or for which mechanics' liens could be filed; and that there are no unrecorded interests in the Property, together with whatever standard owner's affidavit and/or indemnity (ALTA form) that may be required by the Aitkin County Company to issue an Owner's Policy of Title Insurance with the standard exceptions waived.
 - (d) Other Documents. All other documents reasonably determined to be necessary to transfer the Property to County free and clear of all encumbrances except for the Permitted Encumbrances or as requested by the Aitkin County Abstract Company.
 - (e) Lease and Contract Terminations. Evidence of termination of all leases or other occupancy agreements affecting the Property, if any, and evidence of termination of any service and maintenance contracts, equipment leases and other contracts regarding the Property, if any, all in form and substance acceptable to County, effective as of the Closing Date.
7. County's Closing Obligations. On the Closing Date, County will execute and/or deliver to Seller the following, which (in the case of documents) are referred to as "County's Closing Documents." County's Closing Documents shall be duly executed and, where appropriate, be in recordable form.

- (a) Purchase Price. The cash portion of the Purchase Price and Relocation, less utilities held in escrow, if any, by wire transfer or other immediately available funds.
- (b) Other Documents. Such other documents as the Aitkin County Abstract Company deems necessary to record the Seller's Closing Documents and issue the Title Insurance Policy required by this Agreement.
8. Costs and Prorations. Seller and County agree to the following prorations and allocation of costs regarding this Agreement:
- (a) All real estate taxes due and payable in the year of Closing shall be prorated on a calendar year basis through the Closing Date. Seller shall pay all special assessments levied or pending as of the Closing Date. County shall pay all real estate taxes due and payable in years following Closing. County shall pay all special assessments levied from and after the Closing Date.
- (b) County shall pay all title charges for any abstracting and the issuance of the Title Commitment.
- (c) County shall pay any Title Policy premium for the owner's policy of title insurance.
- (d) County shall pay all costs of recording the Deed.
- (e) County shall pay for the cost of recording any other documents necessary to convey the Property as required by this Agreement.
- (f) County shall pay the state deed tax.
- (g) County shall pay the mortgage registry tax, if any, in connection with the Closing.
- (h) Any closing fee payable to the Aitkin County Abstract Company shall be paid by County.
- (i) All other operating costs of the Property, if any, will be allocated between Seller and County as of the Closing Date, so that Seller pays that part of such other utility costs attributable to the Property on or before the Closing Date and County pays that part of such utility costs attributable to the Property from and after the Closing Date.
- (j) Each of the parties will pay its own attorneys' fees, except that a party defaulting under this Agreement or any closing document will pay the reasonable attorneys' fees, court costs and any and all other costs incurred by the non-defaulting party to enforce its rights regarding such default.
9. Representations and Warranties by Seller. Seller represents and warrants to County as follows:
- (a) Authority. Seller has the requisite power and authority to enter into and perform this Agreement and those Seller's Closing Documents signed by it; the foregoing documents

have been duly executed and delivered; the execution, delivery and performance by Seller of such documents do not conflict with or result in a violation of any judgment, order, or decree of any court or arbitrator or any other agreements of any nature to which Seller is a party; such documents are valid and binding obligations of Seller, and are enforceable in accordance with their terms.

(b) Contracts. Seller has not entered into any contracts for the sale of the Property other than this Agreement. Seller has received no notice of and has no knowledge of any rights of first refusal or first offer, options to purchase any of the Property or any other rights or agreements which may delay or prevent this transaction. All leases for any part of the Property will be terminated and all parties currently in possession will have vacated the Property on or before the Closing Date.

(c) Mechanic's Liens. There has been no labor or materials of any kind furnished to or for the benefit of the Property for which payment in full has not been made.

(d) Proceedings, etc. Seller has received no notice of any proceedings (other than from County), nor to the best of the Seller's knowledge, any special assessments or threatened proceedings against the Property, either administrative or judicial, and that there is no litigation or condemnation proceeding pending, nor to the best of Seller's knowledge threatened, which would affect the Property or the County's use thereof.

(e) Other Agreements. That no note, mortgage, security agreement, or other agreement affecting the Property requires the consent of any party (or Seller shall provide such consent if necessary at its expense) or requires a change in the terms and conditions of the underlying financing as a result of the sale contemplated by this Agreement, and that there are no defaults existing in any such agreements affecting the Property.

(f) Hazardous Materials; Storage Containers. Seller has not stored, released, disposed of, nor permitted any other party to store, release or dispose of, and to the best of Seller's knowledge there has not been any placement of storage vessels, tanks, barrels or other containers, or the storage, release, or disposal of any Hazardous Material in, on, about, or from the Property. The term "Hazardous Materials" means asbestos, urea formaldehyde, polychlorinated biphenyls, nuclear fuel or materials, radioactive materials, explosives, pesticides, known carcinogens, petroleum products and by-products, and any pollutant, contaminant, chemical, material or substance defined as hazardous or as a pollutant or a contaminant in, or the release or disposal of which is regulated by, any federal, state, county, municipal, local or other statute, ordinance or regulation which relates to or deals with human health or the environment, including, without limitation, all regulations promulgated by a regulatory body pursuant to any such statute, ordinance, or regulation, including, but not limited to, the Comprehensive Environmental Response and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601, as amended.

(g) Wells; Storage Tanks. There are no wells or storage tanks located on the Property. If there is a well on the Property, a well certificate shall be completed in the form required by law.

Seller will indemnify County, its successors and assigns, against, and will hold County, its successors and assigns harmless from, any expenses or damages, including reasonable attorneys' fees, that County incurs because of the breach of any of the above representations and warranties, whether such breach is discovered before or after Closing. Each of the representations and warranties herein contained shall survive the closing or the early termination or the merger of this Agreement. Consummation of this Agreement by County with knowledge of any such breach by Seller will not constitute a waiver or release by County of any claims due to such breach. Seller's representations and warranties contained in this Section must be accurate in all material respects now and on the Closing Date as if made on the Closing Date and Seller shall have delivered to County at Closing an Update Certificate.

10. Representations and Warranties by County. County represents and warrants to Seller that County has the requisite power and authority to enter into this Agreement and the County's Closing Documents signed by it; such documents have been duly authorized by all necessary action on the part of County and have been duly executed and delivered; that the execution, delivery and performance by County of such documents do not conflict with or result in violation of any judgment, order or decree of any court or arbitrator to which County is a party; such documents are valid and binding obligations of County, and are enforceable in accordance with their terms. County will indemnify Seller, its successors and assigns, against, and will hold Seller, its successors and assigns, harmless from, any expenses or damages, including reasonable attorneys' fees, that Seller incurs because of the breach of any of the above representations and warranties, whether such breach is discovered before or after Closing. Each of the representations and warranties herein contained shall survive the closing or the early termination or the merger of this Agreement. Consummation of this Agreement by Seller with knowledge of any such breach by County will not constitute a waiver or release by Seller of any claims due to such breach.
11. Condemnation. If, prior to the Closing Date, eminent domain proceedings are commenced against all or any portion of the Property by an entity other than County, Seller shall immediately give notice to County of such fact and at County's option (to be exercised within thirty (30) days after Seller's notice), this Agreement shall terminate, in which event neither party will have further obligations under this Agreement. If County does not give such notice within thirty (30) days, then there shall be no reduction in the Purchase Price, and Seller shall assign to County at the Closing Date all of Seller's right, title and interest in and to any award made or to be made in the condemnation proceedings. Prior to the Closing Date, Seller shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without County's prior written consent, which consent shall not be delayed or withheld unreasonably.
12. Broker Commissions. Seller and County represent and warrant to each other that they have dealt with no brokers, finders or the like in connection with this transaction.
13. Survival. All of the terms of this Agreement will survive and be enforceable after the Closing and delivery of the Deeds unless otherwise stated herein.

14. Notices. Any notice required or permitted to be given by any party to the other shall be given in writing, and shall be (i) hand delivered to the receiving party (or any officer of such party), or (ii) mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (iii) property deposited with a nationally recognized, reputable overnight courier, property addressed as follows:

If to Seller: Aitkin County Growth, Inc.
316 1st Ave. NW
Aitkin, MN 56431

Attn: Barbara Carr, President

If to County: Aitkin County Attorney's Office
217 2nd St. NW, Room 231
Aitkin, MN 56431

Attn: James P. Ratz, County Attorney

Notices shall be deemed effective on the earlier of the date of receipt or in the case of such deposit in the mail or overnight courier, on the third business day following such deposit. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, at least ten (10) days prior to the effective date of such change.

15. Entire Agreement. This written Agreement constitutes the complete agreement between the parties and supersedes any and all other oral or written agreements, negotiations, understandings and representations between the parties regarding the Property. There are no verbal or written side agreements that change this Agreement.
16. Amendment; Waiver. No amendment of this Agreement, and no waiver of any provision of this Agreement, shall be effective unless set forth in a writing, expressing the intent to so amend or waive, and the exact nature of such amendment or waiver, and signed by all parties (in the case of amendment) or the waiving party (in the case of waiver). No waiver of a right in any one instance shall operate to waive any other right, nor as a waiver of such right in a later or separate instance.
17. Binding Effect. This Agreement binds and benefits the parties and their successors and assigns.
18. Controlling Law; Venue. This Agreement is made in Minnesota, and shall be interpreted under Minnesota law. The parties agree to submit any dispute they cannot themselves resolve to the District Court of Minnesota for adjudication, with venue in Aitkin County.
19. Remedies. If County defaults under this Agreement, Seller shall have the right to terminate this Agreement by giving written notice to County in the manner provided by law (except that the notice period shall in no event be less than thirty (30) days). If County fails to cure such default within thirty (30) days of the date of such notice, this Agreement will terminate

and Seller shall be entitled to retain the Earnest Money, if any. The termination of this Agreement and the retention of the Earnest Money, if any, will be the sole remedies available to Seller for such default by County, and County will not be liable for damages or specific performance. If Seller defaults under this Agreement, County may bring an action for specific performance, for any other remedy available under Minnesota law, or may terminate this Agreement upon written notice to Seller whereupon Seller must immediately refund all Earnest Money, if any, to the County.

20. Counterparts. For the convenience of the parties, any number of counterparts hereof may be executed and each such executed counterpart shall be deemed an original, but all such counterparts together shall constitute one and the same Agreement.
21. Entry upon the Property before Closing. The County and the County's agents may enter the exterior areas of the Property before Closing during normal business hours at any time following the execution of this Agreement for the purposes of removing tree obstructions and performing ancillary cleanup activities required due to removing tree obstructions. Seller has previously received specifications concerning the specific obstructions that will be removed. Seller understands and agrees that the purchase price County pays stated in paragraph 3 above includes all payments for any tree obstructions.

Seller and County have executed this Agreement effective as of the date first written above.

SELLER

Aitkin County Growth, Inc.

By: _____
Barbara Carr, President

COUNTY

Authorized signature

Authorized Signature

Name Title

Name Title