

RESOLUTION NO. 1456

RESOLUTION APPROVING A PURCHASE AGREEMENT FOR A 12-ACRE PARCEL FROM RUMMELLS FARMS, INC.

WHEREAS, the City of West Branch and Rummells Farms, Inc. have negotiated a purchase agreement for an approximate 12-acre parcel located on Fawcett Drive in the City; and

WHEREAS, the parties have agreed that the City will pay the sum of \$225,000.00 for said 12-acre parcel; and

WHEREAS, the City will use 8 acres of this Property to relocate the Croell Redi-Mix, Inc. operations to said parcel.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Cedar County, Iowa, that the aforementioned Purchase Agreement be and the same is hereby approved. Further, the Mayor and City Clerk are hereby directed to execute said Land Exchange Agreement on behalf of the City.

Passed and approved this 2nd day of May, 2016.


Roger Laughlin, Mayor

ATTEST:


Matt Muckler, City Administrator/Clerk

OFFER TO PURCHASE REAL PROPERTY

TO: Rummells Farms, Inc. (hereafter, "Rummells")

- 1. REAL ESTATE DESCRIPTION.** The City of West Branch, Iowa, (hereinafter, "West Branch") a municipal corporation, hereby offers to purchase the following Real Property in the City of West Branch, Cedar County, Iowa:

Lot 4, Rummells Commercial Subdivision, West Branch, Iowa.

This parcel shall hereafter be referred to as the "Property."

- 2. PURCHASE PRICE.** The purchase price of the Property shall be \$225,000.00, payable at West Branch, Cedar County, Iowa, to be paid as follows:

Upon execution of this Agreement by Rummells and approval of the Agreement by the West Branch City Council, West Branch shall deliver a check in the amount of \$1,000.00, to be held in the Lepic Kroeger Realtors trust account, as earnest money for this Agreement, and the balance of the Purchase Price to be paid at the closing after all of Rummells' obligations have been met.

- 3. DATE OF POSSESSION/CLOSING.** If approved by the West Branch City Council, Rummells shall deliver possession to West Branch on June 1, 2016 (hereinafter, the "Closing"). However, in the event that the CONDITION PRECEDENT set forth in Paragraph 21 below does not occur prior to May 3, 2016, this Agreement shall become null and void and Rummells shall return any payments received by Rummells to West Branch.

- 4. REAL ESTATE TAXES.** Rummells shall pay any unpaid real estate taxes payable in prior years. In addition, Rummells shall pay to West Branch, or West Branch shall be given a credit for, taxes from the 1st day of July prior to the date of possession based upon the last known actual net real estate taxes payable according to the Cedar County Treasurer.

5. SPECIAL ASSESSMENTS.

(a) Rummells shall pay all special assessments which are a lien on the Property as of the date of acceptance of this offer.

(b) All other special assessments shall be paid by West Branch.

- 6. RISK OF LOSS AND INSURANCE.** Rummells shall bear the risk of loss or damage to the Property prior to the date of possession. Rummells shall maintain existing insurance on the Property. In the event of damage to the Property prior to closing, West

Branch shall have the right to complete the closing and receive any and all insurance proceeds regardless of the extent of damage.

7. **CARE AND MAINTENANCE.** The Real Estate shall be preserved in its present condition and delivered intact at the time possession is delivered to Buyers, provided, however, if 5.a. is stricken and there is loss or destruction of all or any part of the Real Estate from causes covered by the insurance maintained by Sellers, Buyers agree to accept such damaged or destroyed Real Estate together with such insurance proceeds in lieu of the Real Estate in its present condition and Sellers shall not be required to repair or replace same.
8. **USE OF PURCHASE PRICE.** At the time of closing, funds from the purchase price may be used to pay any real estate taxes, transfer taxes, abstracting fees, utility bills, and any outstanding liens and to acquire outstanding interests, if necessary.
9. **ABSTRACT AND TITLE.** Rummells, at their sole expense, shall promptly obtain an abstract of title to the Property continued through the date of acceptance of this Offer, and deliver it to West Branch for examination. It shall show merchantable title in Rummells in conformity with this Agreement, Iowa law and title standards of the Iowa State Bar Association. Rummells shall make every reasonable effort to perfect title. If the closing is delayed by Rummells' inability to provide marketable title, this Agreement shall remain in full force and effect unless rescinded by West Branch after giving ten days written notice to Rummells. The abstract shall become property of West Branch when the purchase price is paid in full. Rummells shall pay the costs of any additional abstracting work due to any act or omission of Rummells.
10. **DEED.** Upon payment of the purchase price (less allowed deductions), Rummells shall convey the Property to West Branch by Warranty Deed, free and clear of all liens, restrictions, and encumbrances.
11. **TIME IS OF THE ESSENCE.** Time is of the essence in this contract.
12. **REMEDIES OF THE PARTIES.**
 - (a) If West Branch fails to perform this contract, Rummells may forfeit it as provided in the Iowa Code, and all payments made shall be forfeited, at Rummells' option, upon thirty days' written notice of intention to accelerate the entire balance because of such failure (during which thirty days such failure is not corrected) Rummells may declare the entire balance immediately due and payable. Thereafter, this contract may be foreclosed in equity and the Court may appoint a receiver.
 - (b) If Rummells fails to timely perform this contract, West Branch shall have the right to have all payments made returned to them.

(c) Rummells and West Branch also are entitled to utilize any and all other remedies or actions at law or in equity available to them and shall be entitled to obtain a judgment for costs and attorneys fees as permitted by law.

13. **APPROVAL OF THE COURT.** If the sale of the Property is subject to Court approval, the fiduciary shall promptly submit its contract for such approval. If this contract is not so approved, it shall be void.
14. **CONTRACT BINDING ON SUCCESSORS IN INTEREST.** This contract shall apply to and bind the successors in interest of the parties.
15. **CONSTRUCTION.** Words and phrased shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.
16. **TIME FOR ACCEPTANCE.** If this offer is not accepted on or before 5 o'clock p.m.on April 29, 2016, it shall become void and all payments shall be repaid to West Branch.
17. **CERTIFICATION.** Rummells and West Branch each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order of the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify, and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to a breach of the foregoing certification.
18. **CITY COUNCIL APPROVAL REQUIRED.** Both parties acknowledge that this contract is not enforceable against West Branch until such time as it is approved by the West Branch City Council. If the West Branch City Council does not approve this Agreement by May 17, 2016, then this Agreement shall become null and void.
19. **ACCESS TO PROPERTY.** Upon execution of this Agreement by both parties, West Branch shall have the right to enter the Property for the purposes of surveying, testing and inspection.
20. **VOLUNTARY TRANSACTION.** Both parties expressly agree that this transaction is voluntary and that West Branch will not use its power of eminent domain to acquire the Property.
21. **CONDITION PRECEDENT TO CLOSING.** Rummells expressly agrees that the following condition must be met prior to the closing:

- (a) In the event that the City Council shall have not approved an Agreement with Croell Redi-Mix to move the Croell Redi-Mix plant from its current location at 325 E. Green Street in West Branch, Iowa to a portion of the Property by May 3, 2016, this Agreement shall become null and void and any earnest money given to Rummells shall return to the City.

22. ADDITIONAL PROVISIONS. West Branch understands that Rummells may wish to treat the sale of this real estate as a part of an IRC §1031 like-kind exchange and West Branch agrees to cooperate with Rummells and execute such documents as may be required to complete such exchange, provided that no such document shall create any liability to West Branch and West Branch shall not be required to take title to any property as a part of such exchange.

Dated this 2nd day of May, 2016.

City of West Branch:


Roger Laughlin, Mayor

APPROVED by the City Council on May 2, 2016.

RUMMELLS FARMS, INC.

By: Susan J. Kinsey, President
Susan J. Kinsey, President
Print name and title

Accepted on this 1 day of April, 2016.