

A G E N D A R E P O R T

DATE September 2, 2003

ITEM Purchase Land on the SW Corner of the intersection of 10th Ave N and 57th St

INITIATED BY Great Falls Soccer Foundation/Fiscal Services Department

ACTION REQUESTED City Commission Approve Purchase

PRESENTED BY Coleen Balzarini, Fiscal Services Director

- - - - -

RECOMMENDATION:

Staff recommends the City Commission approve the following motion:

MOTION:

I move the City Commission approve the purchase of a 34.61 acre tract of land located on the SW Corner of the intersection of 10th Avenue North and 57th Street North. (A tract of land in the SW ¼ of Section 3, Township 20 North, Range 4 East, MPM, Cascade County Montana, from Energy West for \$190,000 and authorize the City Manager and staff to execute the necessary documents.

SYNOPSIS:

Energy West owns a 34.61 acre parcel of land on 10th Avenue North and 57th Street North suitable for constructing a soccer field complex. The complex would be comprised of fields, pavilion, parking, restrooms, and storage facilities. The owner has offered the property for sale at a purchase price of \$190,000. Upon City Commission approval, a closing date will be set for approximately September 30, 2003.

BACKGROUND:

On September 2, 2003, the Commission will also be asked to approve a resolution placing the question of approval of funds to build a soccer park on the November 2003 ballot. In the event this is approved for the ballot, and the public approves the question, the Energy West land acquisition cost will be reimbursed with bond proceeds. In the event the ballot question is not approved, the cost of the land acquisition may be reimbursed using existing non-voted General Obligation debt issuance authority or existing reserves.

This property was previously appraised in excess of \$207,500. A current market analysis indicates the \$190,000 price is reasonable, and this price is acceptable to Energy West.

The Energy West property is one of many properties considered over the past two years as a potential site for a soccer park containing ideally at least 10 soccer fields. There are many desirable components to this property. These include acquisition availability, accessibility to the site, the levelness of the ground, and the size of the site. The soccer park will be used regularly for weekend play, including traveling teams and tournaments. Current standards indicate that a minimum of a 35 acre site is highly desirable to adequately accommodate these activities. Due to the limited availability of such land located in close proximity to the City, approval of the land purchase is recommended to accommodate the current soccer park plan or to hold in anticipation of future development potentials.



(LAND) BUY-SELL AGREEMENT



1 This Agreement stipulates the terms of sale of this property. Read carefully before signing. This is a legally
2 binding contract. If not understood, seek competent advice.

3
4 Great Falls, Montana, (date) August 20, 2003,
5 The City of Great Falls, as

6 joint tenants with rights of survivorship, tenants in common, single in his/her own right, Other Montana
7 1070 C1 (hereinafter called "Buyer") agrees to purchase, and the Seller agrees to sell the following described real
8 property (hereinafter referred to as "Property"), commonly known as Energy West Property at 57th Street
9 and 10th Avenue North

10 in the City of n/a, County of Cascade
11 Montana, legally described as: a 34.61 Acre Tract of Land located on the SW Corner of the
12 intersection of 10th Avenue North and 57th Street North. A tract of land in the SW1/4
13 of Section 3, Township 20 North, Range 4 East, MPM, Cascade County Montana. This
14 contract is contingent upon the Buyer reviewing and approving the metes and bounds
15 description of this property.

16
17
18 TOGETHER with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other
19 appurtenances thereto, uncut timber and non-harvested crops and all improvements thereon except: no
20 exceptions.

21 **PERSONAL PROPERTY:** The following items of personal property, free of liens and without warranty of condition, are
22 included: none.

23
24
25 **PURCHASE PRICE AND TERMS:**

26 Total purchase price is One Hundred Ninety Thousand
27 U.S. Dollars (\$ 190,000.00) payable as follows:
28 \$ 1.00 earnest money to be applied at closing.
29 \$ _____ as additional cash payment, payable on or before closing.
30 \$ 189,999.00 balance of the purchase price will be financed as follows:
31 Conventional Other Financing Seller Financing Assumption Home equity
32 Cash at Closing.

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42 Buyer's offer is contingent upon obtaining the financing specified herein. If financing cannot be obtained within the time
43 set forth in the TIME FOR COMPLETION section, this offer is terminated and the earnest money will be refunded to
44 the Buyer.

45
46 **CLOSING DATE:** The date of closing shall be (date) September 30, 2003. The parties may, by
47 mutual agreement, agree to close the transaction at any time prior to the date specified. The Buyer and Seller will
48 deposit with the closing agent all instruments and monies necessary to complete the purchase in accordance with this
49 Agreement.

Buyer's Initials

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101 **CONTINGENCIES:** The inspection contingency and the contingencies listed below in additional provisions or on
102 attached addenda shall be deemed to have been released, waived, or satisfied, and the transaction shall continue to
103 closing, unless, by the date specified for each contingency, the party requesting that contingency has notified the other
104 party or the other party's Broker/Salesperson in writing that the contingency is not released, waived, or satisfied. If a
105 party has notified the other party prior to the release date that a contingency is not released, waived, or satisfied, the
106 transaction is terminated, and the earnest money will be returned to the Buyer, unless the parties negotiate other terms
107 or provisions.

108 **TITLE CONTINGENCY:** This offer is contingent upon Buyer's receipt and approval (to Buyer's satisfaction) of
109 the preliminary title commitment. Release Date: 10 business days from Buyer's
110 or Buyers representative's receipt of preliminary title commitment.

111 **PROPERTY INVESTIGATION:** This offer is contingent upon Buyer's independent investigation of the
112 following conditions relating to the property, including but not limited to; covenants, zoning, access,
113 easements, well depths, septic and sanitation restrictions, surveys or other means of establishing the comers
114 and boundaries, special improvement districts, restrictions affecting use, special building requirements, future
115 assessments, utility hook up and installation costs, environmental hazards, or anything else Buyer deems
116 appropriate. Buyer agrees that any investigations or inspections undertaken by Buyer or on his/her behalf
117 shall not damage or destroy the property, without the prior written consent of Seller. Further, Buyer agrees to
118 return the property to its original condition and to indemnify Seller from any damage or destruction to the
119 property caused by the Buyer's investigations or inspections, if Buyer does not purchase the property.

120 Release Date: September 30, 2003

121 This offer is contingent upon the approval of the project by the City of the Great Falls
122 Soccer Foundation Board and the Great Falls City Commission.

123 _____
124 _____
125 _____

126 _____ Release Date: September 30, 2003

127 This offer is contingent upon the approval of the Energy West, Inc. Board of Directors.

128 _____
129 _____
130 _____

131 _____
132 _____ Release Date: September 30, 2003

133 ADDITIONAL PROVISIONS: Seller to pay for 1/2 closing fees, and recording fees to their
134 interest. The Buyer to pay for 1/2 closing fees, all inspection fees, and recording
135 fees to their interest.

136 _____
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140 _____

141 _____
142 **CONVEYANCE:** The Seller shall convey the real property by General Warranty

143 deed, free of all liens and encumbrances except those described in the title insurance commitment, as approved by
144 Buyer. The Seller shall convey the personal property by Bill of Sale.

145 _____
146 **CLOSING AGENTS FEES:** Closing agents fees will be paid by Seller Buyer Equally Shared.

147 _____
148 **TITLE INSURANCE:** Seller, at Seller's expense, shall furnish Buyer with an ALTA Standard Coverage Owners Title
149 Insurance Policy (as evidenced by a standard form American Land Title Association title insurance commitment) in an
150 amount equal to the purchase price. Buyer may purchase additional owner's title insurance coverage in the form of
151 "Extended Coverage" or "Enhanced Coverage" for an additional cost to the buyer. It is recommended that buyer
152 obtain details from a title company.

153 _____
154 **CONDITION OF TITLE:** All mortgages, judgements and liens shall be paid or satisfied by the Seller at or prior to
155 closing unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements or
156 other adverse title conditions will be placed against the title to the property subsequent to the effective date of the
157 preliminary title commitment approved by the Buyer.



Buyer's Initials

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158 **SPECIAL IMPROVEMENT DISTRICTS:** Special Improvement Districts (including rural SIDs), including those that
159 have been noticed to Seller by City/County but not yet spread or currently assessed, if any, will be:

160 paid off by Seller at closing; assumed by Buyer at closing;

161 OR _____

162

163 All perpetual SIDs shall be assumed by Buyer.

164

165 **PRORATION OF TAXES AND ASSESSMENTS:** Seller and Buyer agree to prorate taxes, Special Improvement
166 District assessments for the current tax year, as well as pre-paid rents, water and sewer system charges, heating fuel
167 and tank rental, irrigation assessments, Homeowner's Association dues and/or common maintenance fees, if any, as
168 of the date of closing unless otherwise agreed and: there shall be no exceptions.

169

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171

172

173 **CONDITION OF PROPERTY:** Seller agrees that the Property shall be in the same condition, normal wear and tear
174 excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the Property.
175 Seller will remove all personal property not included in this sale prior to closing.

176

177 **NOXIOUS WEEDS DISCLOSURE:** Buyers of property in the state of Montana should be aware that some properties
178 contain noxious weeds. The laws of the State of Montana require owners of property within this state to control, and to
179 the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an
180 owner of property, contact either your local County extension agent or Weed Control Board.

181

182 **MEGAN'S LAW DISCLOSURE:** Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code
183 Annotated, certain individuals are required to register their address with the local law enforcement agencies as part of
184 Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices will make the
185 information concerning registered offenders available to the public. If you desire further information please contact the
186 local County Sheriff's office, the Montana Department of Justice, in Helena, Montana, and the probation officers
187 assigned to the area.

188

189 **BUYER'S REMEDIES:** (A) If the Seller fails to accept the offer contained in this Agreement within the time period
190 provided in the BUYER'S COMMITMENT section, all earnest monies shall be returned to the Buyer. (B) If the Seller
191 accepts the offer contained in this Agreement, but refuses or neglects to consummate the transaction within the time
192 period provided in this Agreement, the Buyer may:

193

194 (1) Demand immediate repayment of all monies that Buyer has paid as earnest money, and upon the return of

195 such money, the rights and duties of Buyer and Seller under this Agreement shall be terminated; OR

196 (2) Demand that Seller specifically perform Seller's obligation under this Agreement; OR

197

198 **SELLER'S REMEDIES:** If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to
199 consummate the transaction within the time period provided in this Agreement, the Seller may:

200

201 (1) Declare the earnest money paid by Buyer be forfeited; OR

202 (2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement; OR

203

204 **BUYER'S AND SELLER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing this
205 Agreement, as Buyer or Seller, represents that he/she is eighteen (18) years of age or older, of sound mind, and
206 legally competent to own or transfer real property in the State of Montana; and, if acting on behalf of a corporation,
207 partnership, or other non-human entity, that he/she is duly authorized to enter into this Agreement on behalf of such
208 entity.

209

210 **CONSENT TO DISCLOSE INFORMATION:** Buyer and Seller hereby consent to the procurement and disclosure by
211 Buyer, Seller, and Salespersons and their attorneys, agent, and other parties having interests essential to this
212 Agreement, of any and all information reasonably necessary to consummate the transaction described in this
213 Agreement, specifically including access to escrows for review of contracts, deeds, trust indentures, or similar
214 documents concerning this property or underlying obligations pertaining thereto.


Buyer's Initials

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Seller's Initials

215 **RISK OF LOSS:** All loss or damage to any of the above-described real property or personal property to any cause is
216 assumed by Seller through the time of closing unless otherwise specified.

217
218 **TIME IS OF THE ESSENCE:** Time is of the essence as to the terms and provisions of this agreement.
219

220 **BINDING EFFECT AND NON-ASSIGNABILITY:** This Agreement is binding upon the heirs, successors and assigns
221 of each of the parties hereto; however, Buyer's rights under this Agreement are not assignable without the Seller's
222 express written consent.

223
224 **ATTORNEY FEES:** In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement, the
225 prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall
226 determine just.

227
228 **COMMISSION:** ~~The Seller's and/or Buyer's commitment to pay a commission in connection with this transaction is an~~
229 ~~integral part of this Agreement.~~ 

230
231 **FACSIMILE:** The parties agree that a facsimile copy of this Agreement to Sell and Purchase which contains the
232 parties' signatures may be used as the original.

233
234 **ENTIRE AGREEMENT:** This Agreement, together with any attached exhibits and any addenda or amendments
235 signed by the parties, shall constitute the entire agreement between Seller and Buyer, and supersedes any other
236 written or oral agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by the
237 Seller and Buyer.

238
239 **COUNTERPARTS:** A copy of this document may be executed by each individual/entity separately, and when each
240 has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete contract between
241 the parties.

242
243 **EARNEST MONEY DISPUTES:** Buyer and Seller agree that, in the event of any controversy regarding the earnest
244 money and things of value held by the Broker, closing agent, or any person or entity holding such money or property,
245 unless mutual written instructions are received by the holder of the earnest money and things of value, Broker or
246 closing agent shall not be required to take any action, but may await any proceedings, or, at Broker's or closing
247 agent's option and sole discretion, may interplead all parties and deposit any monies or things of value in a Court of
248 competent jurisdiction and may utilize as much of the earnest money deposit as may be necessary to advance the
249 cost and fees required for filing such action.

250
251 **ALTERNATIVE DISPUTE RESOLUTION:** At any time, the parties may agree to submit any dispute arising out of this
252 transaction to mediation or arbitration. Parties, by agreement, shall specify mediation OR binding arbitration. The cost
253 of mediation/arbitration shall be paid equally by the parties.

254
255 **ADDENDA ATTACHED:** (Check all that apply.) Sale of Buyer's Property 1031 Tax Deferred Exchange
256 Addendum for Additional Provisions Back-up Offer _____
257

258 **RELATIONSHIP CONFIRMATION:** The parties to this agreement confirm that the real estate licensees identified
259 hereafter have been involved in this transaction in the capacities indicated below and the parties have previously
260 received the required statutory disclosures setting forth the licensees duties and the limits of their obligations to each
261 party:

262
263 Mark Macek of Macek Real Estate
264 (name of licensee) (name of Brokerage company)


265 is acting as Seller's Broker/Salesperson; Dual Broker/Salesperson; Statutory Broker.

266
267 Mark Macek of Macek Real Estate
268 (name of licensee) (name of Brokerage company)

269 is acting as Buyer's Broker/Salesperson; Dual Broker/Salesperson; Statutory Broker;
270 Seller's Broker/Salesperson (includes Seller's Sub-Broker or Salesperson).


Buyer's Initials

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Seller's Initials

271 **BUYER'S ACKNOWLEDGMENT:** Buyer acknowledges that he/she has examined the real and personal property, that
272 Buyer enters into this Agreement in full reliance upon his/her independent investigation and judgement, that prior
273 verbal representations by the Seller or Seller's agent or representatives do not modify or affect this Agreement, and
274 that by signing this Agreement Buyer acknowledges having read and understood this entire Agreement.
275

276 **BUYER'S COMMITMENT:** I/We agree to purchase the above-described Property on the terms and conditions set
277 forth in the above offer and grant to said Salesperson until (date) August 22, 2003
278 at 5:00 a.m. p.m. (Mountain Time) to secure Seller's written acceptance. Buyer may withdraw this
279 offer at any time prior to Buyer being notified of Seller's written acceptance. If Seller has not accepted by the time
280 specified, this offer is automatically withdrawn.

281
282 **I/WE HEREBY ACKNOWLEDGE** receipt of a copy of this Agreement bearing my/our signature(s).

283
284 Buyer's Address: P.O. Box 5021 City Great Falls
285
286 State Montana, Zip Code 59403 Phone Number 406-455-8450
287

288 Buyer's Name Printed: The City of Great Falls

289
290 Dated this August 21, 2003, at 1030 a.m. p.m. (Mountain Time).

291
292 
293 _____
294 (Buyer's Signature) (Buyer's Signature)

297 **OFFER PRESENTATION:** This offer was presented to the Seller(s) on

298
299
300 Date: _____ Time _____ a.m. p.m. By: _____
301 (Signature of person presenting the offer)
302
303

304 **SELLER'S COMMITMENT:** I/We agree to sell and convey to Buyer the above-described Property on the terms
305 and conditions herein above stated. I/We acknowledge a receipt of a copy of this Agreement bearing my/our
306 signature(s) and that of the Buyer(s) named above.

307 Seller's Address: _____ City _____
308
309
310 State _____, Zip Code _____ Phone Number _____
311

312 Seller's Name Printed: _____

313
314 Dated this _____, at _____ a.m. p.m. (Mountain Time).

315
316
317
318 (Seller's Signature) (Seller's Signature)

320 **ACTION TAKEN, IF OTHER THAN ACCEPTANCE:**

321
322 Rejected by Seller _____ / _____ / _____ Modified per Attached Counter _____ / _____ / _____
323 Seller's Initials Date Seller's Initials Date

NOTE:
Any performance which is required to be completed on a Saturday, Sunday or a Holiday can be performed on the next business day.

