

**FIRST AMENDMENT TO
CONTRACT FOR DEED**

This First Amendment to Contract for Deed (the “Amendment”) is entered into effective as of the ____ day of _____, 2022 (“Effective Date”), by and between **the City of Foley, Minnesota** (“City”), and **LeRoy C. Herbst and Catherine M. Herbst, as Trustees of the LeRoy Charles Herbst Revocable Trust and LeRoy C. Herbst and Catherine M. Herbst, as Trustees of the Catherine Marie Herbst Revocable Trust**, collectively hereinafter be referred to as “Herbst.”

RECITALS

- A.** Previously, the City and Herbst agreed to the sale of approximately 26.09 acres by contract for deed, and the conveyance of an option on an additional 26.09 acres for a total of 52.18 acres.
- B.** The City and Herbst entered into a Contract for Deed recorded June 30, 2021, as Document No. 453583 (the “Contract”), upon which Herbst agreed to sell to the City the eastern portion of Tax Parcel No. 020049300 (the “Property”). The parties believed the transaction was for 26.09 acres.
- C.** The Contract for Deed was executed in conjunction with an Option Agreement dated June 21, 2021 for an additional 26.09 acres.
- D.** Since executing the Option Agreement and after a land survey was completed, the City and Herbst learned that the original land conveyed to the City from Herbst was 1.58 acres less than what was originally stated in the Option Agreement.
- E.** Due to the ongoing negotiations relating to the reduction of acreage, the City did not make its first scheduled payment for the Property, which was scheduled to occur on August 15, 2022.
- F.** With the reduction of land, the parcels that were originally intended to be two equal parcels totaling 52.18 acres, now need to be two different size parcels; the eastern half of Tax Parcel No. 020049300, conveyed in this contract for deed, will be 29.66 acres and the western half, conveyed in the option agreement, will be 20.94 acres. The total acreage conveyed to the City will be 50.60 acres.

- G.** The City and Herbst wish to revise the Contract for Deed’s terms pursuant to this Amendment to account for the reduction in acreage conveyed to the City in the Option Agreement and to address the payment schedule.

In consideration of the foregoing recitals, which are incorporated herein by reference and for other good and valuable consideration, the receipt and sufficiency of which the City and Herbst acknowledge, the City and Herbst agree as follows:

1. **Purchase Price.** Paragraph 4 of the Contract is replaced in its entirety with the following provision:

“PURCHASE PRICE. Purchaser [the City] shall pay to Seller the sum of \$593,200 (29.66 acres for \$20,000.00 per acre) for the purchase price for the Property, payable as follows: Earnest Money in the amount of \$5,000, shall be applied to the purchase price as a down payment, the receipt of which is hereby acknowledged, and the balance of \$588,200, plus interest as described below, to be paid as follows: a sum of \$116,087.29 due on or before November 15, 2022, and a sum of \$116, 087.29 due on or before August 15, 2025; for the next three (3) years, the City shall pay a sum of \$145,000.00 due on or before the 15th day of August for the subsequent three (3) years, to pay the purchase price in full, on or before August 15, 2026.

Year 1 (2022)	The sum of \$116,087.29 due on or before October 15, 2022.
Year 2 (2023)	The sum of \$116,087.29 due on or before August 15, 2023.
Year 3 (2024)	The sum of \$145,000.00 due on or before August 15, 2024.
Year 4 (2025)	The sum of \$145,000.00 due on or before August 15, 2025.
Year 5 (2026)	The sum of \$145,000.42 due on or before August 15, 2026.

This Agreement shall bear interest at the rate of four percent (4%) per annum; said interest to be first deducted from the annual payment and the balance of said annual payments then applied toward reduction of the principal sum due hereunder. Attached as **Exhibit B** is the amortization schedule.

Herbst does not allege any breach in the Contract due to payment not being made on or before August 15, 2022. Herbst hereby waives any remedy available to them, either in this Contract or under law, as it relates to the City not making a payment on or before August 15, 2021.”

2. **Cooperation.** Paragraph 13 shall be amended to include the following language, at the end of the current paragraph:

H. Although, the City and Herbst contemplated splitting Tax Parcel No. 020049300 in the future into two equal parcels, because of the reduction in acreage, the split can no longer create two equal parcels. The eastern parcel of Tax Parcel No. 020049300 will be 29.66 acres and the western half will be 20.94 acres. The total acreage conveyed will be 50.60 acres. Herbst agrees to cooperate with the City in the development of the Property, including, but not limited to, subdividing and platting of the Property, land use approvals, annexation, and extension of utilities.

In consideration of the this Contract, Herbst will cooperate with the City, to dedicate or convey to the City, any and all easements. Herbst will sign all necessary documents to execute all necessary easements, including, but not limited to an easement on the south end of the Property for a sewer line.'

3. **No Other Changes.** Except as amended herein, the remaining provisions of the Option Agreement shall remain in full force and effect.

4. **Defined Terms.** All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Option Agreement.

5. **Counterparts; Binding Effect.** This Amendment may be signed in any number of counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument. In addition, signature and acknowledgment pages from any counterpart may be removed and attached to any other counterpart so that any counterpart with all such signature and acknowledgment pages attached shall be deemed to be a complete and fully executed original. Facsimile and emailed signatures shall constitute originals. This Amendment shall be binding on the parties and their respective heirs, successors and assigns.

[Signature pages to follow.]

STATE OF MINNESOTA)
) SS
COUNTY OF BENTON)

On this ____ day of _____, 2022, before me, a Notary Public for this County, personally appeared LeRoy C. Herbst, as Trustee of the Catherine Marie Herbst Revocable Trust.

Notary Public

STATE OF MINNESOTA)
) SS
COUNTY OF BENTON)

On this ____ day of _____, 2022, before me, a Notary Public for this County, personally appeared Catherine M. Herbst, as Trustee of the Catherine Marie Herbst Revocable Trust.

Notary Public

Exhibit B
(Amortization Schedule)

Interest accrued from 6/1/21 to 10/03/22 on original contract of \$516,800								\$ 27,920.00
		Payment		Interest		Principal		Balance
10/3/2022		\$ 116,087.29		\$ 27,920.00		\$ 88,167.29		\$ 428,632.71
10/3/2022		Additional Acreage added to balance				\$ 71,400.00		\$ 500,032.71
8/15/2023		\$ 116,087.29		\$ 17,280.00		\$ 98,807.29		\$ 401,225.42
8/15/2024		\$ 145,000.00		\$ 16,049.00		\$ 128,951.00		\$ 272,274.42
8/15/2025		\$ 145,000.00		\$ 11,321.00		\$ 133,679.00		\$ 138,595.42
8/15/2026		\$ 145,000.42		\$ 6,405.00		\$ 138,595.42		\$ -
		\$ 667,175.00		\$ 78,975.00		\$ 588,200.00		