City of Stoughton, 207 S. Forrest Main Street, Stoughton WI 53589

RESOLUTION OF THE COMMON COUNCIL

Authorizing and directing the proper City official(s) to enter into a Purchase Agreement and Easement for 154 W. Main Street

Committee Action: Finance Committee approved 5-0 on June 23, 2020

Fiscal Impact: $0

File Number:	R-156- 2020	**Date Introduced:**	October 13, 2020

WHEREAS, the alley across the rear portion of 154 W. Main has historically been used as a public corridor; and

WHEREAS, the building which extends under the alley had been deemed structurally unstable to accommodate vehicular traffic; and

WHEREAS, the property owner invested $31,000 to fortify, fill and stabilize the foundation below the alley; and

WHEREAS, the desires to keep the alley corridor open to public travel; and

WHEREAS, the purchase of a Right-of-Way Easement will allow continued public use across this property; and

BE IT RESOLVED by the Common Council of the City of Stoughton that the proper city official(s) be hereby directed and authorized to enter into the attached Purchase and Sale of Right-of-Way Easement and associated Grant of Right-of-Way Easement document.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

_____

Tim Swadley, Mayor Date

Council Action: _____ ☐ **Override** **Vote** _____

CITY OF STOUGHTON
FINANCE DEPARTMENT
207 S. Forrest Street, Stoughton, WI 53589

(608) 873-6677 www.ci.stoughton.wi.us

Date: June 19, 2020

To: Finance Committee

From: Jamin Friedl, CPA
Director of Finance/Comptroller

Subject: Chorus House Alley Purchase

City Staff has been in discussion with the owners of the Chorus House, located at 154 W. Main Street regarding the potential purchase of the alley property that is currently owned by the Chorus House property owners and is not believed to be dedicated to the public at this time. While making improvements to the building, the owners discovered the ceiling of the old coal vault in the alley was deteriorating and was not structurally sound enough to accommodate vehicular traffic. When the basement ceiling under the alley was found to be defective, the City closed the alley to all traffic due to safety concerns. To make this portion of the property under the alley safe, the owners closed off the under-alley vaults with concrete, excavated and filled the rooms below the property with road-worthy materials.

In order to make this alley a public right-of-way property, the owners are offering to sell the alley property to the City of Stoughton for $31,000. This amount reflects the expense incurred to re-fortify and stabilize the foundation below the alley spanning the width of the property.

By purchasing this property, the City can dedicate the entire alley to the public for general use. Without this purchase, the owner could not allow the public to use this portion of the alley. Directors Hebert and Scheel believe the owners have demonstrated a good faith effort to work with the City to shore up the vault under the alley with the proper materials and recommend purchasing the property for $31,000. It is worth noting this alley had historically been open to traffic and public use. Should the City determine that the alley was originally dedicated to the City and purchasing the property is not necessary, reimbursing the owners $31,000 for the work completed to make the alley accessible to vehicular traffic will be the most prudent course of action.

The table below is a breakdown of the 2020 CIP budget for Downtown Improvements including the $31,000 discussed above.

Total Budget	Contract 2-2020 Including Contingency	Total Engineering Services & Rep Services	Other Projects	Project Total	Remaining Budget
$975,000	$801,633	$50,000	$108,885	$960,518	$14,482

The remaining budget of $14,482 will be more than sufficient to cover any additional title work and legal costs we may incur because of this transaction.

We are requesting the following from the Finance Committee:

- Direct City Staff and the City Attorney to complete the necessary title work and background research related to this transaction utilizing funds from the 2020 Downtown Improvements budget
- If necessary, approve drafting a purchase and sale agreement utilizing $31,000 from the 2020 Downtown Improvements budget for presentation to the Council at a later date
- If a purchase and sale agreement is not deemed necessary, we are requesting approval to utilize $31,000 from the 2020 Downtown Improvements budget to reimburse the Chorus House owners for the work completed

Respectfully submitted,
Jamin Friedl, CPA
Director of Finance

PURCHASE AND SALE OF RIGHT-OF-WAY EASEMENT

THIS PURCHASE AND SALE OF RIGHT-OF-WAY EASEMENT ("Agreement") dated as of the last signature date below ("Effective Date") is between the CITY OF STOUGHTON, a Wisconsin municipal corporation ("Buyer") and Millenium Trust Co. LLC FBO Carol Jean Vander Sluis IRA (the "Seller").

Recitals

A. Seller owns the East 2/3 of Lot Six (6), Block twenty-one (21) original plat of the City of Stoughton, Dane County, Wisconsin (the "Property");

B. Buyer wishes to purchase, and Seller wishes to sell, a right-of-way easement affecting the Northerly 10 feet of the Property.

NOW, THEREFORE, the parties, for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, agree as follows:

Terms

1. Recitals. The foregoing recitals are hereby incorporated into this Agreement as if fully set forth in this Section 1.

2. Definitions. Any capitalized terms used herein but not defined shall have the meaning given to them in the Easement Agreement.

3. Agreement to Sell and Buy Easement. Seller hereby agrees to sell to Buyer and Buyer hereby agrees to buy from Seller in accordance with the provisions of this Agreement, the permanent easement in substantially the same form as the Right-of-Way Easement Agreement attached as Exhibit A (the "Easement Agreement").

4. Purchase Price. Buyer shall pay Seller Thirty One Thousand and 00/100 Dollars ($31,000.00) (the "Purchase Price") on the Closing Date.

5. Closing Date. Except as otherwise set forth herein, the closing (the "Closing") of the purchase and sale of the easement shall take place at a mutually agreed upon date, but not later than November 30, 2020, (the "Closing Date"), at the title company selected by Buyer, by means of a remote closing, or at a mutually agreed location or locations and by means mutually agreed to by the parties. The Closing Date may be extended upon the mutual agreement of the parties.

6. Seller's Representations and Warranties. In order to induce Buyer to enter into this Agreement, Seller makes the following representations and warranties set forth in

this Section to Buyer, each of which shall be deemed to be independently material with the intention that Buyer shall rely upon the same and acknowledge that the same shall be true on the date hereof and shall survive the Closing of this transaction.

a) *Tenants or Occupants*. Seller represents and warrants that, other than Seller, there are no tenants, persons or entities occupying or having a right to occupy the Property or any part thereof, whether pursuant to a lease or other occupancy agreement or otherwise.

b) *Litigation and Proceedings*. Seller represents that there is no action, litigation, investigation, condemnation or proceeding of any kind pending or, to the best of Seller's knowledge, threatened against Seller or the Property which could affect the Property, any portion thereof or title thereto. Seller shall give Buyer prompt written notice if any such action, litigation, investigation, condemnation, or proceeding is commenced with respect to the Property on or prior to the Closing Date.

c) *Conflicting Obligations*. The execution and delivery of this Agreement does not, and the consummation of the purchase of the Easement Agreement contemplated hereby will not, conflict with or violate any provisions of, or result in the maturation or acceleration of, any obligations under any contract, agreement, instrument, document, lease, license, permit, indenture, or obligation, or any law, statute, ordinance, rule, regulation, code, guideline, order, arbitration award, judgment or decree, concerning the Seller or the Property or to which the Seller is a party.

7. Seller's Covenants. From the Effective Date and extending until the Closing Date, Seller, its agents, representatives, heirs, successors and assigns, covenant that, except with Buyer's prior written consent, shall not undertake or authorize any person to:

a) place or construct any buildings, structures, or other improvements of any kind on, in, or over the Property;

b) alter the surface of the Property, including, without limitation, the excavation or removal of soil, sand, gravel, rock, or peat;

c) grant title, or any easement, right-of-way or other legal interest of any kind to any portion of the Property; and

8. Notices. All documents to be delivered and all correspondence and notices to be given in connection with this Agreement shall be in writing and given by personal delivery, by facsimile, or sent by a nationally recognized overnight courier or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller: _____
_____
_____
_____

If to Buyer: City Clerk
City of Stoughton
207 South Forrest Street
Stoughton, WI 53589
Email: rjscheel@ci.stoughton.wi.us

With a copy to: Matthew P. Dregne
Stafford Rosenbaum LLP
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
Email: mdregne@staffordlaw.com

A notice delivered personally shall be delivered personally to the person whose attention mailed notices are addressed. A notice sent by facsimile shall be deemed given to the party to whom it is sent on the date actually transmitted. A notice sent by mail shall be deemed to have been given to the party to whom it is addressed on the date the same is deposited in the United States registered or certified mail, return receipt requested, postage prepaid, properly addressed to such party at its then current address for the giving of notices. Either party hereto may change such party's address for the service of notice hereunder by written notice of said change to the other party hereto, in the manner above specified ten (10) days prior to the effective date of said change.

9. Headings; Days. All section headings herein are inserted for convenience only and shall not modify or affect the construction or interpretation of any provision of this Agreement. Unless otherwise specified herein, references to days shall mean calendar days.

10. Amendment, Modification and Waiver. This Agreement may not be modified, amended or supplemented except by mutual written agreement of all the parties hereto. Any party may waive in writing any term or condition contained in this Agreement and intended to be for its benefit; provided, however, that no waiver by any party, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such term or condition, unless otherwise specified herein. Each amendment, modification, supplement or waiver shall be in writing signed by the party or the parties to be charged.

11. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, including by scanned image (e.g., .pdf) or by facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that all such counterparts, in the aggregate, shall contain the signatures of all parties hereto.

12. Entire Agreement. This Agreement (and all exhibits hereto) represents the full and complete agreement of the parties with respect to the subject matter hereof and supersedes and replaces any prior understandings and agreements among the parties with respect to the subject matter hereof and no provision or document of any kind shall be included in or form a part of such agreement unless signed and delivered to the other party by the parties to be charged.

Expenses. Except as otherwise herein provided, all expenses incurred in connection with this Agreement or the transactions herein provided for shall be paid by the party incurring such expenses and costs.

13. Recording. The Easement Agreement shall be recorded with the Dane County Register of Deeds on the Closing Date, at Buyer's cost.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

[Signature page follows]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date of the last signature below.

BUYER:
CITY OF STOUGHTON

_____ By_____
Date Tim Swadley, Mayor

ATTEST

By_____
Holly Licht, City Clerk

SELLER:

Millenium Trust Co. LLC FBO Carol Jean Vander Sluis IRA

_____ By _____

Date Carol J. Vander Sluis

Attachments:
Exhibit A – Grant of Right-of-Way Easement

GRANT OF RIGHT-OF-WAY EASEMENT

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:
Matthew P. Dregne
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701-1784

P.I.N.
281/0511-082-1586

For good and valuable consideration, receipt of which is hereby acknowledged, Millenium Trust Co. LLC FBO Carol J. Vander Sluis IRA ("Grantor") does hereby convey, grant, transfer and assign to the City of Stoughton, Dane County, Wisconsin, a municipal corporation (the "City"), and its successors and assigns, the permanent easement hereinafter described.

1. *Permanent Easement*. Grantor does hereby convey, grant, transfer, and assign to the City an exclusive permanent right-of-way and easement over, under and across the premises described as the "permanent easement area" in Exhibit A and depicted on Exhibit B (the "Permanent Easement Area") for public right-of-way, including the following purposes: (i) to construct, maintain, inspect, operate, repair, replace and reconstruct public street and public utility infrastructure, including necessary underground and aboveground associated facilities, accessories and appurtenances; (ii) to establish and maintain a grade within the Permanent Easement Area in connection with the public street; and (iii) to preserve the Permanent Easement Area for use by the general public as a public street. The City shall have the right to come upon the Permanent Easement Area at any time and for all purposes relating to the exercise of its rights hereunder.

2. *Restrictions on Grantor*. Grantor shall not take any action or permit others to take any action that interferes with or is inconsistent with the City's rights under this Easement. In particular, Grantor shall not interfere with the City's right to use the Permanent Easement Area, and shall not install any structure of any kind upon the Permanent Easement Area. Grantor shall not drill in or upon, or change the grade of the Permanent Easement Area, and Grantor shall not take any action that impairs or impedes the use of the Permanent Easement Area as public right-of-way.

3. *Binding Effect, Assignability and Transfer Restriction*. The Easement granted by this document shall run with the lands described herein, is binding upon the heirs, successors and assigns of Grantor, and shall benefit the City, its successors and assigns.

4. *Grantor Warranty*. Grantor represents and warrants that it is the sole owner of the property described herein, and that no deed, mortgage or easement prohibits Grantor from conveying to the City the easement rights granted under this Agreement. Grantor warrants that Grantor's execution and delivery of the Easement Agreement have

been duly authorized by Grantor, and do not violate, conflict with, or constitute a default under any agreement or instrument binding upon Grantor.

5. *Non-Use*. Non-use or limited use of the rights granted in this Agreement shall not prevent the benefited party from later use of the rights to the fullest extent authorized in this Agreement.

IN WITNESS WHEREOF, Grantor and the City have caused this instrument to be executed this _____ day of _____, 2020.

GRANTOR:
MILLENIUM TRUST CO. LLC FBO CAROL JEAN VANDER SLUIS IRA

By _____
Carol J. Vander Sluis

STATE OF WISCONSIN)
) ss.:
COUNTY OF DANE)

Personally came before me, this _____ day of _____, 2020, the above-named Carol J. Vander Sluis, known to me to be the person who executed the foregoing instrument, and acknowledged the same.

_____
Print name: _____
Notary Public, State of Wisconsin
My Commission expires:_____

CITY OF STOUGHTON

By _____
Tim Swadley, Mayor

By _____
Holly Licht, City Clerk

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

STATE OF WISCONSIN)
) ss.:
COUNTY OF DANE)

Personally came before me, this _____ day of _____, 2020, the above-named Tim Swadley and Holly Licht, known to me to be the persons who executed the foregoing instrument, and acknowledged the same.

_____

Print name: _____
Notary Public, State of Wisconsin
My Commission expires:_____

Attachments:

Exhibit A - Legal Description of Permanent Easement Area
Exhibit B - Map of Permanent Easement Area

This instrument was drafted by:
Matthew P. Dregne
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701-1784
608/256-0226

EXHIBIT A

LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA

The Northerly 10 feet of the East 2/3 of Lot Six (6), Block twenty-one (21) original plat of the City of Stoughton, Dane County, Wisconsin.

EXHIBIT B

MAP OF PERMANENT EASEMENT AREA