



## City Council Meeting

Thursday, December 12, 2024 at 4:30 pm

### LOCATION OF MEETING:

City Hall Council Chambers, 627 N. Adams Street, Carroll, Iowa 51401

### NOTICE

In addition to attending the meeting in person, the public can watch the meeting live from the City's YouTube channel by going to: <https://www.youtube.com/CityofCarrollIowa>. If you choose to watch live on YouTube you are encouraged to subscribe to the City's YouTube channel so you can access the meeting live when it starts. YouTube meeting feeds are a view only option and you will not be able to participate in the meeting.

### AGENDA

1. Pledge of Allegiance
2. Roll Call
3. Resolutions
  - a. Offer to Buy Real Estate and Acceptance (Nonresidential)
4. Adjourn

December/January Meetings:

- \* City Council - December 16, 2024 - City Hall - 627 N Adams St
- \* Parks, Recreation and Cultural Advisory Board - January 6, 2025 - Recreation Center - 716 N Grant Rd
- \* Board of Adjustment - January 6, 2025 - City Hall - 627 N Adams St
- \* Planning and Zoning Commission – January 8, 2025 – City Hall - 627 N Adams St
- \* City Council – January 13, 2025 – City Hall – 627 N Adams St
- \* Airport Commission – January 13, 2025 – Airport Terminal Building - 21177 Quail Ave
- \* Library Board of Trustees – January 20, 2025 – Carroll Public Library – 118 E 5th St
- \* City Council – January 27, 2025 – City Hall – 627 N Adams St

**[www.cityofcarroll.com](http://www.cityofcarroll.com)**

*The City of Carroll will make every attempt to accommodate the needs of persons with disabilities, please notify us at least three business days in advance when possible at 712-792-1000, should special accommodations be required.*



# City of Carroll

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627 N. Adams Street

Carroll, Iowa 51401

(712) 792-1000

FAX: (712) 792-0139

**MEMO TO:** Honorable Mayor and City Council Members

**FROM:** Aaron Kooiker, City Manager 

**DATE:** December 11, 2024

**SUBJECT:** Offer to Buy Real Estate and Acceptance (Nonresidential)

On September 30, 2024, Council authorized Mayor Fleshner to sign a letter of understanding with Peter Simons, John Simons, and K.M.C. Farm LTD. That letter outlined an agreement to purchase approximately 100 acres of farm ground to the west of the Carroll Municipal Golf Course.

After further discussions with Peter Simons, an Offer to Buy Real Estate and Acceptance (Nonresidential) is prepared to purchase 80.5068 acres for \$2,414,075. The purchase of the remaining acres will come in a future agreement.

**RECOMMENDATION:** Council discussion and approval of the Resolution for the Offer to Buy Real Estate and Acceptance (Nonresidential) to purchase 80.5068 acres for \$2,414,075 from Peter Simons, John Simons, and K.M.C. Farm LTD.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING AN OFFER TO BUY REAL ESTATE AND ACCEPTANCE  
(NONRESIDENTIAL) FROM PETER SIMONS, JOHN SIMONS AND K.M.C FARM, LTD.

WHEREAS, Chapter 17, of the Code of Ordinances of the City of Carroll, Iowa, provides that all contracts made by the City be reduced to writing and approved by the City Council by resolution; and

WHEREAS, an Offer to Buy Real Estate and Acceptance (Nonresidential) from Peter Simons, John Simons and K.M.C. Farm, LTD is attached as Exhibit A.

WHEREAS, it is determined that the approval of the Offer to Buy Real Estate and Acceptance (Nonresidential) from Peter Simons, John Simons and K.M.C. Farm, LTD is in the best interest of the City of Carroll, Iowa;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carroll, Iowa, that the Offer to Buy Real Estate and Acceptance (Nonresidential) from Peter Simons, John Simons and K.M.C. Farm, LTD is approved.

Passed and approved by the Carroll City Council this 12th day of December, 2024.

CITY COUNCIL OF THE  
CITY OF CARROLL, IOWA

By: \_\_\_\_\_  
Gerald H. Fleshner, Mayor

ATTEST:

By: \_\_\_\_\_  
Laura A. Schaefer, City Clerk



## **OFFER TO BUY REAL ESTATE AND ACCEPTANCE (NONRESIDENTIAL)**

TO: Peter Simons, John Simons, and K.M.C. Farm, LTD, an Iowa Corporation, (SELLERS)

The undersigned BUYER hereby offers to buy and the undersigned SELLERS by their acceptance agree to sell the real property situated in Carroll County, Iowa, legally described as:

The South 80.5068 acres of the following described real estate (subject to survey):  
See attachment

together with any easements and appurtenant servient estates, but subject to any reasonable easements of record for public utilities or roads, any zoning restrictions customary restrictive covenants and mineral reservations of record, if any, herein referred to as the "Property," upon the following terms and conditions provided BUYER, on possession, is permitted to use the Property for residential development.

1. **PURCHASE PRICE.** The Purchase Price shall be \$2,414,075 and the method of payment shall be as follows: \$2,500 with this offer, to be deposited upon acceptance of this offer and held in trust by Sellers' agent or Qualified Intermediary as earnest money, to be delivered upon performance of SELLERS' obligations and satisfaction of BUYER'S contingencies, if any; and the balance of the Purchase Price, payable on or before January 30, 2025.
2. **REAL ESTATE TAXES.** Sellers shall pay real estate taxes prorated to date of closing and any unpaid real estate taxes payable in prior years. Buyer shall pay all subsequent real estate taxes, if any.  
Unless otherwise provided in this Agreement, at closing SELLERS shall pay BUYER, or BUYER shall be given a credit for, taxes from the first day of July prior to possession to the date of possession based upon the last known actual net real estate taxes payable according to public records.
3. **SPECIAL ASSESSMENTS.** Sellers shall pay in full at time of closing all special assessments which are a lien on the property as of the date of closing.
4. **RISK OF LOSS AND INSURANCE.** SELLERS shall bear the risk of loss or damage to the Property prior to closing.
5. **POSSESSION AND CLOSING.** If BUYER timely performs all obligations, possession of the Property shall be delivered to Buyer on or before January 30, 2025, and any adjustments of rent, insurance, interest and all charges attributable to the SELLERS' possession shall be made as of the date of closing. Closing shall occur after the approval of title by BUYER and vacation of the Property by SELLERS, but prior to possession by BUYER. This transaction shall be considered closed upon the filing of the title transfer documents and receipt of all funds due at closing from BUYER under the Agreement.
6. **FIXTURES.** Included with the Property shall be all fixtures that integrally belong to, are specifically adapted to or are a part of the real estate, whether attached or detached.

7. **CONDITION OF PROPERTY.** The property as of the date of this Agreement, including buildings, grounds, and all improvements, will be preserved by the SELLERS in its present condition until possession, ordinary wear and tear excepted. SELLERS make no warranties, expressed or implied, as to the condition of the property. Buyer acknowledges that they have made a satisfactory inspection of the Property and are purchasing the Property in its existing condition.
8. **ABSTRACT AND TITLE.** SELLERS, at their expense, shall promptly obtain an abstract of title to the Property continued through the date of acceptance of this Agreement, and deliver it to BUYER'S attorney for examination. It shall show marketable title in SELLERS in conformity with this Agreement, Iowa law, and title standards of the Iowa State Bar Association. The SELLERS shall make every reasonable effort to promptly perfect title. If closing is delayed due to SELLERS' inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten days written notice to the other party. The abstract shall become the property of BUYER when the Purchase Price is paid in full. SELLERS shall pay the costs of any additional abstracting and title work due to any act or omission of SELLERS, including transfers by or the death of SELLERS or their assignees. The abstract shall be obtained from an abstracter qualified by the Guaranty Division of the Iowa Housing Finance Authority.
9. **SURVEY.** If a survey is necessary to effectively accomplish this sale, SELLERS and BUYER shall equally pay the costs thereof.
10. **ENVIRONMENTAL MATTERS.**

SELLERS warrant to the best of their knowledge and belief that there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Property, the Property does not contain levels of radon gas, asbestos, or urea-formaldehyde foam insulation which require remediation under current governmental standards, and SELLERS have done nothing to contaminate the Property with hazardous wastes or substances. SELLERS warrant that the property is not subject to any local, state, or federal judicial or administrative action, investigation or order, as the case may be, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks. SELLERS shall also provide BUYER with a properly executed GROUNDWATER HAZARD STATEMENT showing no wells, private burial sites, solid waste disposal sites, private sewage disposal system, hazardous waste and underground storage tanks on the Property.
11. **DEED.** Upon payment of the Purchase Price, SELLERS shall convey the Property to BUYER by Warranty Deed, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement. General warranties of the title shall extend to the time of delivery of the deed excepting liens and encumbrances suffered or permitted by BUYER.
12. **JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE.** If SELLERS, immediately preceding acceptance of the offer, hold title to the Property in joint tenancy with full rights of survivorship, and the joint tenancy is not later destroyed by operation of law or by acts of the SELLERS, then the proceeds of this sale, and any continuing or recaptured rights of SELLERS in the Property, shall belong to SELLERS as joint tenants with full rights of survivorship and not as tenants in common; and BUYER in the event of death of any SELLER, agree to pay any balance of the price due SELLERS under this contract to the

surviving SELLERS and to accept a deed from the surviving SELLERS.

13. JOINDER BY SELLER'S SPOUSE. SELLER'S spouse, if not a title holder immediately preceding acceptance, executes this Agreement only for the purpose of relinquishing all rights of dower, homestead and distributive share or in compliance with Section 561.13 of the Code of Iowa and agrees to execute the deed for this purpose.
14. USE OF PURCHASE PRICE. At time of settlement, funds of the Purchase Price may be used to pay taxes and other liens and to acquire outstanding interests, if any, of others.
15. REMEDIES OF THE PARTIES.
  - A. If BUYER fails to timely perform this Agreement, SELLERS may forfeit it as provided in the Iowa Code (Chapter 656), and all payments made shall be forfeited; or, at SELLERS' option, upon thirty days written notice of intention to accelerate the payment of the entire balance because of BUYER'S default (during which thirty days the default is not corrected), SELLERS may declare the entire balance immediately due and payable. Thereafter this Agreement may be foreclosed in equity and the Court may appoint a receiver.
  - B. If SELLERS fail to timely perform this Agreement, BUYER has the right to have all payments made returned to them.
  - C. BUYER and SELLERS are also entitled to utilize any and all other remedies or actions at law or in equity available to them, and the prevailing parties shall be entitled to obtain judgment for costs and attorney fees.
16. NOTICE. Any notice under this Agreement shall be in writing and be deemed served when it is delivered by personal delivery or mailed by certified mail, addressed to the parties at the addresses given below.
17. GENERAL PROVISIONS. In the performance of each part of this Agreement, time shall be of the essence. Failure to promptly assert rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. This Agreement shall apply to and bind the successors in interest of the parties. This Agreement shall survive the closing. This Agreement contains the entire agreement of the parties and shall not be amended except by a written instrument duly signed by SELLERS and BUYER. Paragraph headings are for convenience of reference and shall not limit or affect the meaning of this Agreement. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, neutral or other gender according to the context.
18. NO REAL ESTATE AGENT OR BROKER. Neither party has used the service of a real estate agent or broker in connection with this transaction.
19. CERTIFICATION. Buyer and Sellers 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 or 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 my breach of the foregoing certification.
20. INSPECTION OF PRIVATE SEWAGE DISPOSAL SYSTEM. (Sellers represent and warrant to Buyer that the Property is not served by a private sewage disposal system, and

there are no known private sewage disposal systems on the property

21. ADDITIONAL PROVISIONS.

- A. Sellers may choose to transfer the subject property pursuant to Internal Revenue Code Section 1031, which sets forth the requirements for tax-deferred real estate exchanges. Sellers' rights and/or obligations under this and future agreements may be assigned to a qualified intermediary or exchange accommodation titleholder for the purpose of completing an exchange. The parties agree to cooperate with each other in a manner necessary to enable completion of an exchange. Such cooperation shall be at no additional cost or liability to a non-exchanging party.
- B. This sale is subject to Sellers purchasing other real estate of their choice on or about January 30, 2025. If sellers are unable to complete their purchase or other real estate by said date, this agreement shall be null and void and any earnest money shall be returned to the Buyer.
- C. This agreement is further subject to approval by the Carroll City Council. If the City Council does not approve this purchase by Resolution, this agreement shall be null and void and any earnest money shall be returned to the Buyer.

ACCEPTANCE. When accepted, this Agreement shall become a binding contract. If not accepted and delivered to BUYER on or before December 19, 2024, this Agreement shall be null and void and all payments made shall be returned immediately to BUYER. If accepted by SELLERS at a later date and acceptance is satisfied in writing, then this contract shall be valid and binding.

Accepted: December \_\_\_\_, 2024

Dated: December \_\_\_\_, 2024

SELLERS:

BUYER

K.M.C. Farm, LTD

CITY OF CARROLL, IOWA

By: \_\_\_\_\_  
Peter Simons

By: \_\_\_\_\_  
Gerald H. Fleshner, Mayor

By: \_\_\_\_\_  
Laura Schaefer, City Clerk

\_\_\_\_\_  
John Simons

\_\_\_\_\_  
Peter Simons

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The North 28 acres of the Northeast Quarter of the Southwest Quarter (NE 1/4 SW 1/4), EXCEPT the West 18 feet (W 18') thereof, and EXCEPT the South 600 feet (S 600') of the East 600 feet (E 600') thereof; the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4), EXCEPT the West 18 feet (W 18') of the South 20 feet (S 20') thereof; the North Half of the Northwest Quarter (N 1/2 NW 1/4), EXCEPT Lot One (1) (as per I.S. 6 Page 171) and EXCEPT Lot Three (3) (as per I.S. 6 Page 168); and EXCEPT the following: That part of said NW 1/4 NW 1/4 described as beginning at the Southwest corner of said NW 1/4 NW 1/4, thence North 500 feet; thence East 749.8 feet; thence South 500 feet; thence West 749.65 feet to the point of beginning; and EXCEPT 1.61 acres in the Northeast corner of said N 1/2 NW 1/4 (sold for road); and EXCEPTING a portion heretofore— conveyed to the State of Iowa, as right of way for highway purposes, ALL in Section Thirteen (13), Township Eighty-four (84) North, Range Thirty-five (35), West of the 5th P.M., Carroll County, Iowa,