

FOR BOARD ACTION

Agenda Item # 12.

Meeting Date:

2/28/06

SUBJECT:

Acquisition of Property for Electric Facility

PREPARED BY:

Joseph S. Hensel, Director of Field Services

ITEM DESCRIPTION:

The 2005-2030 Electric Infrastructure Plan identified the need for a power generation facility along with other power supply resources and DSM as lowest-cost approach to meet the RPU demand and energy requirements to the year 2030. The 2003 Electric System Planning Study identified the need for a new substation to serve the distribution load of the continued development on the west side of Rochester.

In 2005 RPU staff, with the assistance of an engineering and environmental consultants, evaluated the general location for a multi-purpose electric facility and conducted a site screening study on several parcels of property in Cascade and Kalmar Townships, located between Rochester and Byron.

Criteria used in the evaluation of the sites included: proximity to existing or proposed transmission routes, availability of natural gas, alternative fuels and fuel storage, land use and zoning, and various environmental, permitting and site suitability factors. A brief Power Point presentation will be presented at the Board meeting summarizing the Site Screening Study, with conclusions and recommendations.

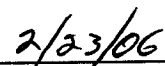
The preferred site is located in the SW1/4 of Section 30 Cascade Township in the southeast quadrant of the intersection of 60th Avenue and 19th Street NW. The parcel is approximately 50 acres. An independent appraisal has been performed and part of the report is provided for board review. RPU designated Mike Nigbur of Rochester Public Works as our agent in negotiations with the property owner. The owners, Willard and Donna Anderson, are willing sellers. An offer has been made and accepted by the Andersons (contingent on Board and Council approval). The total amount of the offer is \$1,000,000.

Mr. Nigbur will be attending the board meeting and available to answer questions regarding the negotiations. He has also prepared a draft Request for Council Action (RCA) that explains some of the details associated with the offer. A copy of the draft RCA is provided.

UTILITY BOARD ACTION REQUESTED:

Staff recommends that the Utility Board request Council approval of the resolution authorizing acquisition of the subject 48.96-acre site for \$980,000.00 and, if possible, the purchase of the additional 1.36-acre site for \$20,000.00, and authorize the Mayor and City Clerk to execute the Settlement Agreement defining the stated terms of the sale(s).


General Manager


Date

ROCHESTER PUBLIC UTILITIES

SETTLEMENT AGREEMENT

This Agreement, made this _____ day of _____, 2006, by and between the CITY OF ROCHESTER, a Minnesota municipal corporation (hereinafter "City"), and WILLARD A. ANDERSON and DONNA M. ANDERSON, husband and wife, (hereinafter "Seller").

WITNESSETH:

WHEREAS, Seller owns land legally described as follows:

The North 109 rods in width off the north side of the West half of the Southwest Quarter, Section 30, Township 107 North, Range 14 West, which is bounded as follows: commencing at the northwest corner of the said Southwest Quarter of said Section 30; thence south on the section line, 109 rods; thence East to the east line of the West half of said Southwest Quarter of said Section 30 thence north 109 rods to the quarter line; thence west to the place of beginning.

and,

WHEREAS, it is necessary that the City acquire the Property in its entirety from the Seller to construct an electrical CT/Substation; and,

WHEREAS, the parties desire to formalize the compensation and other conditions of this property acquisition and otherwise settle this matter without resort to legal action.

NOW, THEREFORE, in consideration of the mutual premises set forth above, it is agreed between the parties as follows:

1. The City shall pay to Seller the sum of \$1,000,000.00 as the total and complete compensation related to the acquisition for the Property.
2. The payments, as outlined herein, shall be paid upon execution and delivery of a warranty deed to City conveying the Property as identified above and subject to the conditions of this agreement. Payment to the Seller shall be made in the following manner:
 - a. Payment of \$980,000.00 shall be made to the Seller at the time of closing.
 - b. Payment of the remaining \$20,000 shall be made upon transfer of 'marketable title' to the City for the 1.36 acres (identified on the attached survey).
3. Seller agrees to execute a Warranty Deed, and any quit claim deeds related to the 1.36 acre area, for the Property.

4. Seller shall be responsible to complete the Quiet Title action or otherwise convey title in the 1.36 acres to the Seller. The Seller shall contribute \$6,000, in addition to the \$1,000,000 purchase price, to pay toward the Quiet Title action/acquisition of the 1.36 acres. Said \$6,000 shall be deposited into the trust account of Ward & Oehler Ltd within 10 days after approval of this agreement by the City Council.
5. A survey of the Quiet Title area referred to as 1.36 acres has not been completed. No change in this agreement shall be necessary if the final survey determines the Quiet Title area to be within .10 acres of 1.36 acres.
6. Upon execution of this agreement, Seller shall furnish Buyer with an updated abstract, which abstract shall be available for Buyer and its Attorney to examine in order to determine marketable title to the property. Buyer shall be allowed ten (10) days after receipt of such abstract for examination of title, making of any objections thereto, and notifying Seller in writing of the nature of such objections. If any objections to title are made and Seller not notified, such objections shall be deemed waived. If any objections to title are made and Seller notified, Seller shall be allowed up to the date of closing to cure such objections. If such objections are not cured prior to the date of closing, Buyer may either: (1) Elect to declare this agreement null and void, in which case neither party shall be liable for damages hereunder to the other party; or (2) consummate the transaction contemplated by this agreement in the same manner as if there had been no title objections but withholding from the cash portion of the purchase price referred to in this agreement a reasonable cost, as estimated by Buyer and Seller, for correcting such objections, in which event the transaction contemplated by this agreement shall consummate on the date of closing and when the objections are cured the withheld proceeds shall be paid to Seller. Seller shall be responsible for curing any objections to title at the Seller's expense. If the Seller and Buyer cannot agree upon the amount to be withheld for correcting an objection, then Paul Ohly, attorney at law, shall determine a reasonable holdback amount and both parties shall agree to that holdback amount.
7. Closing on the property shall occur on or before March 30, 2006 assuming the parties have been able to complete abstract review and after approval of this agreement by the City. Closing may be extended after the agreed upon date upon mutual agreement of the parties.
8. Seller is responsible for the payment and release of all taxes and special assessments, if any, which are outstanding on the Property. Current year property taxes shall be prorated to the date of closing.
9. Seller shall be responsible for the deed tax payable to the Olmsted County Treasurer and Buyer shall be responsible for all other costs associated with the recording of the deed.

10. Seller shall provide any and all data related (surveys of the property, rental agreements, licenses etc.) to the property concurrent with the abstract for the property.
11. City has not yet determined a layout of the property or the final list of uses for the property. However, City shall be responsible to provide landscaping and buffering northerly of the known proposed electrical substation in a manner conceptually similar to the landscaping provided on the City's electrical substation located at 55th Street & 50th Avenue NW provided the electrical substation is the most northerly use of the property. Additionally, in all cases, the City shall landscape the site pursuant to the minimum standards required in the Land Development Manual then in effect at the time of development of the site. This clause shall survive closing and transfer of the property.
12. This agreement represents the complete agreement of the parties and supercedes any and all other prior negotiations related thereto. Seller further releases the City, its officers, employees and agents, from any other claims or liability related to the project.
13. This agreement is subject to approval of the City.

Agreed to between the parties hereof the date above written.

SELLERS

CITY OF ROCHESTER, a Minnesota
Municipal Corporation

Willard A. Anderson

By: _____
Mayor

Donna M. Anderson

By: _____
City Clerk

STATE OF MINNESOTA)
) SS
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by Ardell F. Brede and Judy K. Scherr, the Mayor and City Clerk respectively of the City of Rochester, a Minnesota municipal corporation, for and on behalf of the corporation.

Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF OLMSTED)

The foregoing document was acknowledged before me this ___ day of _____, 200__, by Willard A. Anderson and Donna M. Anderson, husband and wife, for and on their own behalf.

Notary Public

This Document Drafted By:
Rochester Public Works
201 4th Street SE - Room 108
Rochester, MN 55904-3740



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve the acquisition of the subject 48.96-acre site for \$980,000.00 and, if possible, the purchase of the additional 1.36-acre site for \$20,000.00, and authorize the Mayor and City Clerk to execute the Settlement Agreement defining the stated terms of the sale(s) for

Settlement for Acquisition of Willard and Donna Anderson Property
For Construction of RPU Electrical Substation

The amount of the Settlement Agreement to be ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 28th day of February, 2006.

President

Secretary