

FOR BOARD ACTION

Agenda Item # 4

Meeting Date:

12/21/10

SUBJECT:

Purchase of Additional Property Adjacent to RPU Service Center

PREPARED BY:

Joe Hensel, Director of Field Services

ITEM DESCRIPTION:

At the September 28th meeting the Board was informed of a Purchase Option agreement that had been negotiated with the owner of a three acre parcel of property located southeast and adjacent to the RPU Service Center (parcel identification number 74.24.22.031108). The agreement, which is in effect through January 31, 2011, gives RPU an exclusive option to purchase the parcel, minus the east 40 feet, at a price of \$580,000 as agreed to by owner and RPU. The basis for the negotiated price was an independent appraisal performed by Springer Appraisal Associates, Inc. A copy of the Purchase Option Agreement is attached.

RPU included funding for the property acquisition in the proposed 2011 budget, subsequently approved by Board and Council. In conformance with Board policy and City of Rochester Home Rule Charter this purchase of real property must be approved by Board and Council.

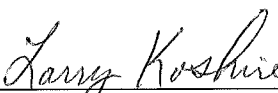
Legal description and survey drawing of the subject property are attached to the executed Purchase Option Agreement.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

Not Applicable

UTILITY BOARD ACTION REQUESTED:

Management recommends that the Board approve and request City Council approval of a resolution authorizing RPU to exercise the purchase option and send notice to the property owner of such intent.



General Manager

12-16-10
Date

PURCHASE OPTION AGREEMENT

THIS AGREEMENT, made this 7th day of September, 2010, between Donald J & Susan J Kinckof (hereinafter referred to as "Seller"), and City of Rochester, a Minnesota municipal corporation (hereinafter referred to as "Buyer").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual benefits to the parties set forth herein, and other good and valuable consideration, the adequacy of which is hereby acknowledged, Seller and Buyer agree as follows:

1. The Seller, in consideration of the Buyer paying \$25,000 (the "Option Deposit"), gives to the Buyer the exclusive option (the "Option") to purchase the property described in Exhibit A (the "Property"). In the event that the Buyer exercises this Option, the Option Deposit shall be applied towards the purchase price of the Property. The Option Deposit is non-refundable and will be forfeited in the event that Buyer fails to exercise the Option. The Buyer shall have the right to exercise this Option during a period of time from the effective date of this agreement until 5:00 p.m. on January 31, 2011 (ending date). The Buyer shall exercise this Option by giving written notice by certified or registered mail to the Seller at the address indicated below (the letter must be delivered to Seller by the ending date) or by hand delivering written notice on or prior to the ending date, to the Seller with the Seller giving the Buyer a written receipt indicating the time and date of delivery. The date that the Seller receives this notice shall be known as the "Date of Notice". If the Buyer does not exercise the terms of this Option by ending date as specified above, then the right and option set forth herein shall immediately terminate and the Option Deposit shall be kept by the Seller.
2. Subject to the Buyer exercising this Option, the Seller and the Buyer hereby agree that the Seller shall sell and the Buyer shall buy Property described in Exhibit A upon the following terms and conditions. Seller fully agrees and acknowledges that the consideration given by the Buyer constitutes legal, adequate, and valuable consideration for the purposes of this agreement.
3. Personal property or fixtures included in sale: None
4. At Buyer's sole discretion, Buyer may purchase the Property for the purchase price of \$ 580,000 ("Purchase Price"). The purchase price, minus the Option deposit, shall be the balance to be paid at closing.

The closing of the sale of the Property, when Buyer is to tender final payment to Seller, shall take place no later than 30 days following Date of Notice. Said date or terms may be extended upon mutual agreement of the parties.

5. Upon performance by Buyer, Seller shall execute and deliver a Warranty Deed conveying marketable title of record, subject to:
 - a. Building and zoning laws, ordinances, state and federal regulations.
 - b. Restrictions relating to use or improvement of the real property without effective forfeiture provisions.
 - c. Reservation of any mineral rights by the State of Minnesota.
 - d. Utility and drainage easements which do not interfere with existing improvements.
 - e. Exceptions to title which constitute encumbrances, restrictions, or easements which have been disclosed to Buyer and accepted by Buyer in this Purchase Option Agreement (must be specified in writing): _____
6. Real estate taxes due and payable in and for the year of closing shall be paid/prorated between the Buyer and Seller through the day to the closing. All unpaid real estate taxes due and payable in years prior to closing, and all penalties, shall be paid by Seller.
7. All special assessments, levied or pending, as well as any special assessments certified for payment with the real estate taxes within the year of closing shall be paid by Seller.
8. Seller states the following:
 - a. Seller warrants that no hazardous substances or petroleum products having been placed, stored, or accidentally or intentionally released from or on the real property by any person, or of any underground storage tanks having been located on the real property at any time, except as follows: There are NO storage tanks underground
 - b. Seller's warranties and representations contained in this paragraph shall survive the delivery of the Warranty Deed, provided that any notice of a defect or claim of breach of warranty must be in writing and any such notice must be given by Buyer to Seller within one year of the Date of Closing or be deemed waived.
 - c. Buyer shall have the right to have inspections of the property conducted prior to closing.
9. Seller has not received any notice from any governmental authority as to violation of any law, ordinance or regulation affecting the real property. If the real property is subject to restrictive covenants, Seller has not received any notice from any person as to a breach of the covenants. Seller has not received any notice from any governmental authority concerning any eminent domain, condemnation, special taxing district, or rezoning proceedings.
10. To demonstrate that Seller's title is good and marketable of record, within a reasonable time after acceptance of this Purchase Option Agreement, Seller shall furnish Buyer with an Abstract of Title or a Registered Property Abstract certified to date including proper searches covering bankruptcies and state and federal judgments, federal court judgment liens in favor of the U.S., liens, and levied and pending special assessments. Buyer shall have ten (10) business days after receipt of the Abstract of Title or Registered Property Abstract to have Buyer's lawyer examine the title and provide Seller with written objections. If any objections to title are not made and Seller notified, such objections shall be deemed waived. If any objections to title are made and Sellers 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 Seller shall return to Buyer its Option Deposit; or (2) consummate the transaction contemplated by this agreement in the same manner as if there had been no title objections with an agreement that the Seller will remove said title objections at its sole cost and expense, whether it be through a quiet title action or such other action as may be necessary.

11. This contract shall be governed by the laws of the State of Minnesota.

12. Closing shall take place at said location:

Business Name: Rochester Public Utilities

Address: 4000 East River Road NE

City, State and Zip: Rochester, MN 55906-2813

13. Additional Terms: _____

14. Attached are ____ addenda which are made part of this Purchase Agreement.

Agreed to between the parties hereof the date above written.

Buyer: City of Rochester

Seller: Donald J. Kirckof
Address: 3745 North Broadway
Rochester, MN 55906

By: *Wesley F. Beade*
Mayor

By: *Donald J. Kirckof*
Donald J. Kirckof

By: *Tudy Kay Swann*
City Clerk

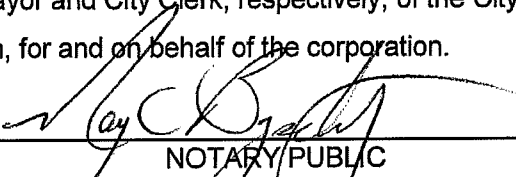
By: *Susan J. Kirckof*
Susan J. Kirckof

Larry Koshini
General Manager, Rochester Public Utilities

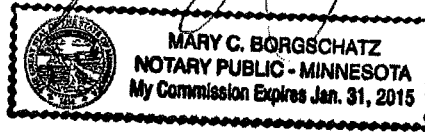
Jerry L. Adkins
City Attorney

STATE OF MINNESOTA)
) SS
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this 23rd day of SEPT, 2010
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 _____)

On this 7 day of September, 2010, before me, a notary public within and for said county, personally appeared Donald J. Kirkoff, personally known to me to be the person described in the foregoing instrument and acknowledged that he/she executed the same on their behalf.



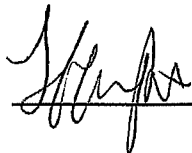


NOTARY PUBLIC

STATE OF MINNESOTA)
) SS
COUNTY OF _____)

On this 7th day of September, 2010, before me, a notary public within and for said county, personally appeared Susan J. Kirkoff, personally known to me to be the person described in the foregoing instrument and acknowledged that he/she executed the same on their behalf.





NOTARY PUBLIC

EXHIBIT A

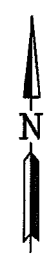
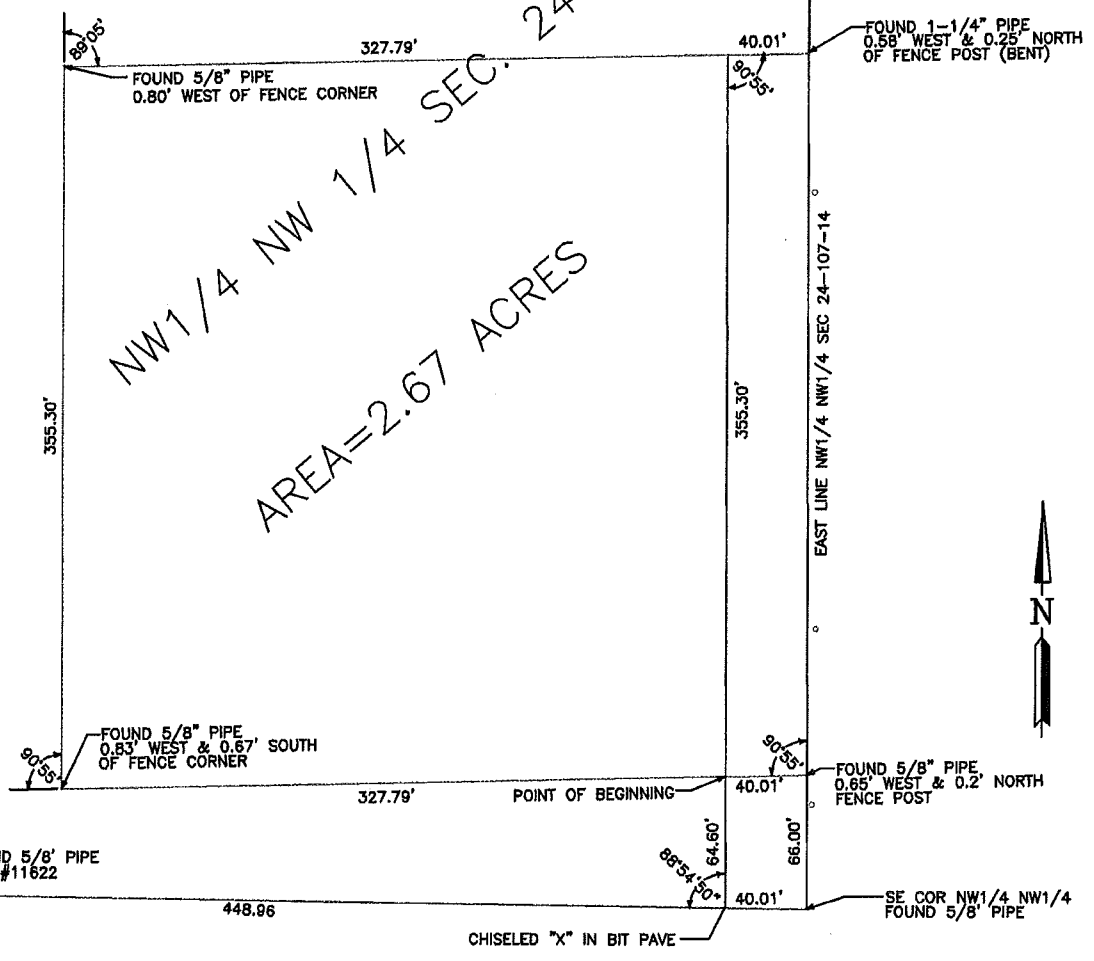
That part of the Northwest Quarter of the Northwest Quarter of Section 24, Township 107 North Range 14 West, Olmsted County, Minnesota described as follows:

Commencing at the Southeast corner of the Northwest Quarter of the Northwest Quarter of said Section 24; thence North 66.00 feet along the East line of said Quarter-Quarter Section to the point of beginning; thence deflecting to the left 90 degrees 55 minutes a distance of 367.80 feet; thence deflecting to the right 90 degrees 55 minutes for a distance of 355.30 feet; thence deflecting to the right 89 degrees 05 minutes a distance of 367.80 feet to the Easterly line of said Quarter-Quarter Section; thence deflecting to the right 90 degrees 55 minutes a distance of 355.30 feet to the point of beginning.

Except the Easterly 40.00 feet thereof measured parallel with said Easterly Quarter-Quarter Section line.

Containing 2.67 acres more or less.

NW 1/4 NW 1/4 SEC. 24-107-14
 AREA=2.67 ACRES



KIRKOF CONVEYANCE	
SCALE NONE	DESIGNED BY
DATE 8/9/2010	DRAWN BY FMR
JOB NO.	CHECKED BY
ROCHESTER PUBLIC UTILITIES	



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 purchase of real property described in Exhibit A, and authorize RPU Management to exercise the purchase option agreement.

The purchase price to be FIVE HUNDRED EIGHTY THOUSAND AND 00/100 DOLLARS (\$580,000.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 21st day of December, 2010.

President

Secretary