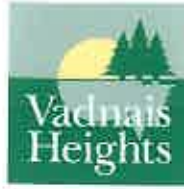


Mark J. Graham, P.E.
City Engineer/Director of Public Service

651.204.6050 Phone
651.204.6150 Fax
mark.graham@cityvadnaisheights.com



The City of Vadnais Heights
800 East County Road E
Vadnais Heights, MN 55127

Memorandum:

TO: Mayor Johannsen and City Council Members

FROM: Mark Graham, City Engineer/Director of Public Service

DATE: July 17, 2014

SUBJECT: Garceau Hardware Environmental Site Assessment- Phase 2

Requested Council Action

Move to approve the Waiver of Trespass and Right of Entry Agreement and the Right of First Refusal contained in the packet, and authorize the Mayor and City Administrator to sign Agreements subject to: 1) David Garceau providing an accurate legal description of the property, 2) the City Attorney finding the condition of title to the property to be satisfactory, and 3) the blanks in the Agreements being completed with the proper legal description and owners of the property.

Background

S.E.H. was directed to and has completed a Phase 1 Environmental Assessment for the Garceau Hardware Property. A copy of it is included in the packet. A copy of the report has also been provided to the property owner, Mr. Dave Garceau. This assessment was approved at a cost of \$ 4200 and funded by the City in an effort to determine if the City would have any interest in pursuing purchase of the property.

On June 4th, City Council directed staff to develop the attached agreements and negotiate terms with Mr. Garceau. City staff agreed to terms, Mr. Garceau will reimburse the City the full cost of the Phase 2 Environment Site Assessment if the City purchases the facility. If another entity purchases the property, the City will be reimbursed ½ the cost for the Phase 2 ESA. Additionally, the City will have a first right of refusal to buy the property up to three years after the completion of the Phase 2 ESA.

As discussed, this is a blighted site that the City Council has found to be a top priority for redevelopment. Mr. Garceau has attempted to sell the property for a while without success potential to the unknowns related to the site be used as a dump site. If Council wants to take on this redevelopment, the City might have to take the lead to make this feasible. Funds for the ESA, potential remediation of the site and purchase of the site are available through TIF funds.

Attachments

- Waiver of Trespass and Right of Entry Agreement
- Proposal from SEH for Phase II Environmental Assessment
- First Right of Refusal Agreement

10B

**AGREEMENT FOR ENVIRONMENTAL SITE ASSESSMENT
AND WAIVER OF TRESPASS/RIGHT OF ENTRY**

For the purpose of economic development and clean up of a blighted property, the City of Vadnais Heights (City) will conduct and pay for an Environmental Site Assessment (ESA) on property owned by _____ (Grantors) located in Vadnais Heights, Minnesota, legally described as follows:

* * *

(Legal Description of Property)

* * *

WHEREAS, Grantors being the owners and occupiers of said property, in exchange for said services being provided on said property, hereby grant(s) permission to the City of Vadnais Heights and its authorized agents, employees and contractors to enter said property for the purpose of conducting an ESA described in Exhibit A attached hereto.

Grantors hereby agrees to indemnify and hold the City harmless from any claims, losses, costs, expenses or damages, including reasonable attorney's fees resulting from the acts or omissions of the City's officers, agents, or employees in connection with said ESA work. Under no circumstances, however, shall the City be required to pay on behalf of itself and other parties any amounts in excess of the limits on liability established in Minnesota Statutes, Chapter 466, or in common law immunities, limits or exceptions to liability.

Grantors hereby also agrees that in exchange for the ESA work Grantors will give the City a Right of First Refusal and agrees upon any sale to the City to reimburse the City for the actual costs of said ESA Phase II study.

This Waiver of Trespass/Right of Entry shall commence immediately and shall continue until 11:59 o'clock p.m. on December 31, 2015, at which time this Right of Entry shall terminate. The Right of Entry shall run to the benefit of and be binding upon the parties hereto and their successors and assigns.

The foregoing Agreement for ESA and Waiver of Trespass/Right of Entry is accepted and approved by the parties as of the ____ day of _____, 2014.

Grantors:

Dated: _____

By: _____

Dated: _____

By: _____

City:
City of Vadnais Heights

Dated: _____

By: _____
Marc Johannsen, Mayor

Dated: _____

By: _____
Kevin Watson, City Administrator



Exhibit A

June 2, 2014

RE: Garceau Hardware Phase II ESA and Asbestos
Inspection Proposal
SEH Project No.128500

Mr. Mark J. Graham, P.E.
City Engineer/Director of Public Service
800 East County Road E
Vadnais Heights, Minnesota 55127-7117

Dear Mr. Graham:

As requested, we are providing a scope of work and cost estimate for providing environmental services for the former Garceau Hardware site in Vadnais Heights. The scope below outlines tasks associated with performing a Phase II Environmental Site Assessment (ESA) of the site, assisting the City in obtaining a "No Association Determination" letter from the Minnesota Pollution Control Agency (MPCA) Voluntary Investigation and Cleanup (VIC) Program, and performing an asbestos inspection of the structures on the site.

The purpose of the Phase II ESA is to evaluate, potential soil, groundwater and soil vapor contamination associated with the site. SEH will conduct the assessment with the understanding that the goal of the project is for eventual site development. The purpose of obtaining the "No Association Letter" is to reduce the City's liability in the purchase of known contaminated property. Prior to demolition of structures on the site an asbestos inspection by a Minnesota Department of Health certified asbestos inspection is required. We have provided a separate cost estimate for completing an asbestos inspection and Hazardous Materials Assessment if requested by the City.

Phase II Environmental Site Assessment

The following series of tasks identifies the activities that will be conducted by SEH in performance of the Phase II ESA.

- Task 1: Work Plan and HASP – This task includes developing a plan for boring locations, depths, sampling depths, sampling parameters and methods. As required by OSHA, SEH will prepare a Health and Safety Plan (HASP) for Phase II Investigation activities.
- Task 2: Field Investigation - The scope and cost for performing this portion of the project is based on our experience with similar projects. SEH will complete a Utility Locate, a private utility locator may be required. Geoprobe borings and associated samples will be used to evaluate the extent and magnitude of contamination in soil and groundwater including soil vapor if groundwater or soil contamination is present. This task includes soil, vapor and groundwater sampling, analysis and documentation. It is assumed that soil cuttings will be thin spread on site and/or returned to the bore hole.

For cost estimating purposes it is assumed that 12 Geoprobe® borings will be conducted to a maximum depth of 25 feet below ground surface. This proposal assumes twelve (12) soil

samples, three (3) groundwater samples and three (3) soil vapor samples will be submitted to the laboratory for analysis. Twelve (12) soil samples and three (3) groundwater samples will be analyzed for GRO, DRO, and Volatile Organic Compounds (VOCs). Four (4) soil samples and two (2) groundwater samples will also be analyzed for Semi-Volatile Organic Compounds (SVOCs), and the 8 RCRA metals. The three (3) soil vapor samples will be analyzed for VOCs. The estimated price also includes soil analysis for; 1 PCB, 1 VOC TCLP, and 1 RCRA Metal for TCLP analysis.

Task 3: Phase II Report - SEH will prepare a Phase II ESA Report presenting the data collected in the field investigation. The report will include figures, tables, boring logs, laboratory reports, conclusions and recommendations.

No Association Determination Letter Assistance

Task 4: No Association Determination Letter – SEH will work with City and MPCA staff to obtain a No Association letter from the MPCA VIC Program. When a voluntary party performs actions at a site contaminated with a hazardous substance, pollutant or contaminant, the voluntary party could under some circumstances become a responsible party for the contamination under Minn. Stat. § 115B.03, subd. 3(4). The No Association Determination (NAD) provides protection from this liability. The NAD is a determination from the MPCA that the specific actions proposed by the voluntary party will not associate them with the identified contamination for the purpose of Minn. Stat. § 115B.03, subd. 3(4).

Asbestos Inspection/Hazardous Materials Assessment

Optional: Asbestos Inspection/Hazardous Materials Assessment – SEH will provide a Minnesota Certified Asbestos Inspector to collect up to forty (40) bulk samples of potential asbestos containing material (ACM). It is understood that the building will be demolished; therefore the SEH inspector will use the destructive method to collect samples. As part of the asbestos inspection, the ACM identified within the structure will be quantified and locations documented for future abatement.

SEH will complete an inspection of the structure to determine if potential hazardous materials are at the site or contained within the building materials. This assessment includes fluorescent bulbs/ballasts, mercury containing switches, CFCs, containers, etc.

Any caulking used in a pre-1979 era structure is subject to regulation when it is disturbed through renovation or demolition. The MPCA regulates caulking that contains PCBs at 50 parts per million (ppm) or greater as hazardous waste. Caulking will be sampled for analysis to determine if it exceeds the 50 ppm limit. For cost estimating purposes, SEH assumes four (4) caulk samples will be required for analysis.

A final report will be prepared documenting the asbestos, hazardous materials and PCB sampling and analysis described above. The report will include the quantities and location of any asbestos, hazardous materials or PCB-Containing caulking waste that needs to be removed or abated prior to demolition or remodeling.

Budget

SEH will complete tasks 1 through 4 listed above on a time and materials basis for an estimated fee of **\$15,750**. SEH will complete the optional asbestos inspection and hazardous materials assessment for an estimated additional fee of **\$4,000**. SEH will not conduct the asbestos and hazardous materials assessment

without authorization to proceed. This letter and the Agreement for Professional Services dated December 20, 2013, along with Exhibits A-2, B, C-1, and D, represent the entire understanding between you and us in respect of the Project and may only be modified in writing signed by both of us. If it satisfactorily sets forth your understanding of our agreement, please sign one copy of this letter in the space provided below and return it to us for our records.

Sincerely,



Allen H. Sunderman, PG
Senior Scientist/Project Manager

Accepted this _____ day of _____, 2014

City of Vadnais Heights

By:

Authorized Client Signature

(Reserved for Recording Data)

RIGHT OF FIRST REFUSAL

THIS AGREEMENT is made this ____ day of _____, 2014, by and between _____ (Owner), and the City of Vadnais Heights, a Minnesota municipal corporation (City).

WHEREAS, the Owner is the fee simple owner of real property located in Vadnais Heights, Ramsey County, Minnesota, legally described on Exhibit A attached hereto (the Owner's Property); and

WHEREAS, the Owner and City have entered into a separate agreement for the purpose of land redevelopment and restoration. The City has commenced an Environmental Site Assessment (ESA) for evaluation of the Owner's Property pursuant to Exhibit B attached hereto.

WHEREAS, it is the intent of the parties that should the Owner's Property be sold, transferred, or conveyed, the cost of said ESA work shall be reimbursed to the City.

WHEREAS, as part of the consideration for the ESA work performed on Owner's Property by the City, the Owner has agreed to give the City a Right of First Refusal pertaining to the Owner's Property in favor of the City, upon the terms and conditions set forth below.

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

1. The Owner hereby grants to the City the Right of First Refusal to buy the Owner's Property on the terms and conditions hereinafter set forth below.
2. Prior to any transfer (including a sale pursuant to a resubmitted offer), gift, exchange assignment, conveyance or other transfer (collectively a Transfer) of all or any part of the Owner's Property, the Owner shall give to the City written notice of the proposed Transfer, together with a full, accurate, and complete description of such proposed

Transfer and a copy of any purchase agreement or other written offer or agreement (collectively the Third-Party Offer) pertaining to the proposed Transfer.

3. The City shall have 60 days after receipt of said written notice to agree to purchase the Owner's Property covered by said Third-Party Offer at the price and according to the terms specified in said Third-Party Offer. If the City so offers to buy for the same price and on the same terms and conditions, then the Owner shall be obligated to accept the offer of the City and sell said property to the City pursuant thereto.
4. In the event the City purchases the Owner's Property, the Owner shall reimburse the City for all of the actual costs incurred by the City in performing the ESA Phase II work at the time of sale and Owner will be provided with an original copy of the Phase II study.
5. If the City does not exercise its right to purchase by giving written notice thereof to the Owner within said 60 day notice period, the Owner may accept the Third-Party Offer and complete the sale to the third-party in accordance with said Third-Party Offer. In the event that the City does not purchase the Owner's Property, the Owner hereby agrees to reimburse City for one half (1/2) of the actual costs incurred by the City in performing the ESA Phase II work at the time of sale and Owner will be provided with an original copy of the Phase II study.
6. In the event the terms of the Third-Party's Offer are changed, or the sale, conveyance or transfer to the third-party on the terms submitted to the City is not completed within 90 days after the end of the 60 day notice period, then the Right of First Refusal in favor of the City shall be revived and the Third-Party Offer shall again be submitted to the City for another 60 day period in the manner stated above.
7. Notwithstanding anything to the contrary contained herein, the following shall not constitute a Transfer: (a) an involuntary transfer of the Owner's Property, including but not limited to a sale resulting from an execution, levy or attachment, the passage of title under a decree or judicial order, the transfer of the Owner's Property to a receiver or trustee in bankruptcy, or a foreclosure sale resulting from a mortgage or other lien against the Owner's Property, (b) a lease of the property for less than one year, (c) the granting of a mortgage interest or other lien against the Owner's Property, (d) the devise or descent of the Owner's Property to the heirs, devisees or personal representatives by operation of law upon the death of either or both of the Owners, and (e) the conveyance of the Owner's property to a revocable living trust for this benefit of one or both of the Owners. Upon the occurrence of any of the foregoing events, this Agreement and the Right of First Refusal granted herein shall not terminate, but rather shall continue and apply to any Transfer made following the occurrence of such event.

8. The Owner shall not mortgage or otherwise cause a lien to be placed against the Owner's Property. However, in the event that the Owner does, then the full amount of the actual costs incurred by the City for the ESA work performed shall be immediately due and payable to the City.
9. All notices hereunder shall be effective when mailed by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the Owner:

To the City:

Attn: City Administrator
City of Vadnais Heights
800 East County Road E
Vadnais Heights, MN 55127

10. The covenants, agreements and obligations contained herein shall be binding upon the Owner, and their successors and assigns, and shall run with the land. The rights granted herein shall run to the benefit of the City, shall be personal to the City and may not be assigned or transferred by the City without the consent or approval of the Owners of the Owner's Property.
11. This Agreement and the rights granted to the City hereunder, shall continue following a Transfer and be binding upon the transferee; provided, however, if: a) the Owner gives the City all of the required notices and fully complies with the terms and conditions of this Agreement, b) the City fails to exercise its right to purchase or acquire the Owner's Property following the expiration of the time periods provided to the City hereunder, and c) the Owner's fee simple ownership of the Owner's Property is voluntarily transferred to a Third Party pursuant to an arm's length, bona fide sale of the Owner's Property, then this Agreement and the City's Right of First Refusal shall terminate. Upon such termination the City shall, if requested by the Owner, execute and deliver to the Owner a recordable document releasing this Right of First Refusal.
12. Enforcement of the terms and conditions of this Agreement shall be by any proceeding at law or in equity, against any person or entity violating or attempting to violate any of the terms and conditions, to restrain such violation, order a reconveyance of the property, to recover damages or to pursue such other remedy which may be just and reasonable. The

failure by any party to enforce any violation of the terms and conditions of this Agreement at any time shall in no event be deemed a waiver of the right to do so thereafter.

13. Invalidation of any of the provisions herein by judgment or other court order shall not affect any of the other provisions which shall remain in full force and effect.

14. This Agreement shall be valid for three (3) years from the date of execution by all parties and will terminate after said date.

15. This Agreement shall be governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties have set their hands as of the date first above written.

OWNER:

CITY:

City of Vadnais Heights

Marc Johannsen, Mayor

Kevin Watson, City Administrator

STATE OF MINNESOTA)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014,
by _____.

Notary Public

STATE OF MINNESOTA)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of ____, 2014,
by Marc A. Johannsen and Kevin Watson, the Mayor and City Administrator, respectively, of
the City of Vadnais Heights, a municipal corporation under the laws of Minnesota, on behalf of
said municipal corporation.

Notary Public