



STAFF REPORT

DATE: January 16, 2018
REGULAR #21

AGENDA ITEM: Purchase Agreement for 3880 Laverne Ave

SUBMITTED BY: Kristina Handt, City Administrator

REVIEWED BY: Brian Swanson, Finance Director

BACKGROUND:

The City began a space needs study for a new city hall, fire station and updates to public works in 2017. One of the options examined in that report was the Brookfield building, 3880 Laverne Ave N. At the December 19th meeting, the Council held a closed session to discuss an offer for the property.

ISSUE BEFORE COUNCIL:

Should the City Council approve the purchase agreement for 3880 Laverne Ave N?

PROPOSAL:

The City Attorney has drafted a purchase agreement for 3880 Laverne Ave N and the .58 acre adjacent parcel at the corner of 39th St and Laverne Ave N. The proposed purchase price is \$875,000. In addition, the City would assume the pending street assessment (Laverne Ave N) estimated at \$71,750. Earnest money of \$40,000 is proposed.

The purchase agreement includes five contingencies:

- Title of the property is acceptable to the city
- Environmental condition of the property is acceptable to the city
- The physical condition of the property is acceptable to the city
- Building analysis/fit test results acceptable to the city
- A financing contingency

Staff has contacted two firms to do the environmental and physical condition inspections. CEG Assessments fee for both is \$3,300. Leo Daly's fee is \$2,500 for each the property condition assessment and the environmental review for a total of \$5,000. Given that it is uncertain if the property will be used for a city hall and/or fire station at this time, staff is not recommending the building fit test be completed. If council would like to identify which option we can obtain quotes for that study.

The City will have 90 days to perform its due diligence in these areas. The closing will then be 30 days after the due diligence period.

The cost of obtaining a Title Commitment will be paid by the sellers. Real estate taxes (est \$23,330) will be prorated from the date of the closing. Other closing fees will be split as is customary along with the seller paying the broker fee.

The purchase agreement allows the city to assign it to the Economic Development Authority (EDA) which may be necessary for financing reasons discussed later.

The Sellers would like for the City to decide if they would like to have the Financing Contingency or the EDA Assignment language but not both. They don't feel it is clear what will happen. Staff left both sections in the agreement and Council can decide which, if any, to remove. A decision on the financing of the purchase will help in determining which removal is in the City's best interest.

FISCAL IMPACT:

Staff has been meeting with bond counsel and our municipal financial advisor Tammy Omdal from Northland to discuss financing options. Having the city issue General Obligation Capital Improvements Bonds is not an option since tenants will remain initially in the building. Therefore, any bonding would need to be done through the Economic Development Authority with taxable lease revenue bonds. Three options include:

- 1) Using City Fund Balance. This could be fund balance in the general fund as well as the utility funds, likely split 80/10/10 (general/water/sewer). Staff would not recommend this option as drawing down the general fund balance that significantly may impact the city's bond rating and trigger the need to levy to increase the fund balance to be within policy guidelines of 50-60%.
- 2) Have the EDA issue lease revenue bonds as the EDA is currently organized. This would then lead to a lease agreement between the City and EDA which would cover the debt payments and possibly operating costs, property taxes, property insurance, etc.
- 3) Have the EDA issue lease revenue bonds after granting HRA powers. The EDA could then pledge the HRA levy as a backup if future Councils decide not to levy for the lease bond payment amounts. This could result in the interest rate being as much as 1% lower than option 2 above. A lease agreement would still be needed as described in option 2.

In the near term, as long as all tenants remain at their current rates, staff estimates the city will net funds after paying bond payments, operating costs, property taxes and insurance. This is due to the city not having to make the current lease payments once ownership changes as well as reduced taxes for the portion that is tax-exempt.

General fund balance can be used in the interim for the purchase of the property and then once bond proceeds are received the City can be reimbursed for the purchase. The EDA will need to approve a reimbursement resolution within 60 days of the purchase. Then they would reimburse the City.

If the Council decides to use fund balance and not have the EDA issue bonds, the unrestricted unassigned fund balance in the General Fund is projected to be at about 51% by 12/31/18. Council could impact that percentage by having the utility funds pay their fair portion of the building costs.

OPTIONS:

Regarding Purchase Agreement:

- 1) Approve the Purchase Agreement for 3880 Laverne Ave N
- 2) Amend and then Approve the Purchase Agreement for 3880 Laverne Ave N
- 3) Do not Approve a Purchase Agreement for 3880 Laverne Ave N

Regarding the contingencies:

- 1) Approve \$3,300 for CEG to complete a property conditions assessment and Phase 1 Environmental
- 2) Approve \$5,000 for Leo Daly to complete a property conditions assessment and Phase 1 Environmental
- 3) Direct staff to obtain quotes for a building fit test (Council identify the use)

Regarding Financing:

- 1) Use fund balance
- 2) EDA taxable lease revenue bonds
- 3) Use HRA powers of EDA, taxable lease revenue bonds

RECOMMENDATION:

“Motion to Amend and then Approve the Purchase Agreement for 3880 Laverne Ave N.”

AND

“Motion to approve \$3,300 for CEG to complete a property conditions assessment and Phase 1 Environmental Assessment.”

AND

“Motion to direct staff to begin securing financing via the EDA using HRA powers.”

ATTACHMENTS:

- Purchase Agreement
- CEG Proposal

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the “**Agreement**”) is made and entered into as of the ____ day of _____, 2018 (which shall be the reference date only of this Agreement) by and between LAKE ELMO ASSOCIATES LLP, a Minnesota limited liability partnership (“**Seller**”) and the CITY OF LAKE ELMO, a public body corporate and politic in the State of Minnesota (“**Purchaser**”).

RECITALS

A. Seller is the owner of certain real property located at 3880 Laverne Avenue North, in the City of Lake Elmo (“**City**”), County of Washington, and State of Minnesota, which is legally described on the attached Exhibit A (the “**Land**”).

B. Seller desires to sell the Land and any and all improvements located thereon to Purchaser, and Purchaser desires to purchase such Land and improvements under the terms and conditions provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the following terms and conditions, the parties agree as follows:

1. **SALE AND PURCHASE**. Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, upon the terms and conditions set forth below, the following:
 - a. Fee simple title to the Land together with improvements constructed on the Land (the “**Improvements**”); and
 - b. Seller’s interest, if any, in: (i) all easements, air rights, and other rights benefiting or appurtenant to the Land; and (ii) all neighboring or contiguous alleys, streets, roads, and utilities servicing, pertaining, or relating to the Land; and
 - c. All personal property and fixtures located in the building that cannot be removed without causing damage to the Improvements including, but not limited to, affixed equipment and appliances (the “**Personal Property**”).

All items described in subsections 1(a) through 1(c) above are collectively referred to in this Agreement as the “**Property**.”

2. **PURCHASE PRICE**. The total purchase price to be paid by Purchaser to Seller for the Property (the “**Purchase Price**”) shall be Eight Hundred and Seventy-Five Thousand and No/100 Dollars (\$875,000.00).

The Purchase Price shall be payable as follows:

- a. Upon execution of this Agreement by both parties, Purchaser shall deposit with St. Croix Title with an address of 10390 39th Street N., Lake Elmo, MN 55042 (the “**Title Company**”) via cash or wire transfer, Forty Thousand and No/100 Dollars (\$40,000.00) (the “**Earnest Money**”). At the Closing, as defined in Section 9 hereof, the Earnest Money and any interest accrued thereon shall be paid to Seller and credited against the Purchase Price. The Title Company shall act as escrow agent with respect to the Earnest Money pursuant to the

terms of this Agreement, shall deposit such Earnest Money in a noninterest-bearing account, and all costs of Title Company, if any, with respect to such escrow shall be borne by Purchaser. If the Purchaser fails to Close for any reason, other than i) properly terminating this Agreement pursuant to the terms of Paragraphs 3 or 6; or ii) the default of Seller, the Earnest Money and any interest accrued thereon shall be retained by the Seller.

- b. The “**Effective Date**” shall be the last date upon which this Agreement is executed by both Purchaser and Seller.
- c. The balance of the Purchase Price, plus or minus the prorations and credits provided in this Agreement, shall be paid to Seller in immediately available funds via certified check or wire transfer at the Closing (as defined in Section 9 hereof).

If there is a dispute between Seller and Purchaser regarding whether the Earnest Money shall be returned to Purchaser or delivered to Seller, Title Company shall have no obligation to either Seller or Purchaser except to interplead the proceeds into an appropriate court of competent jurisdiction. Title Company may act upon any instrument or other writing believed by Title Company in good faith to be genuine and to be signed and presented by the proper person. Title Company shall not be liable in connection with the performance by Title Company of its duties hereunder, except for Title Company’s own fraudulent misconduct or negligence. Title Company shall be under no obligation to institute or defend any action, suit, or legal proceeding in connection herewith or to take any other action likely to involve an expense to Title Company (except to interplead the Earnest Money as aforesaid and within respect to its own wrongful conduct or negligence) unless first indemnified to its reasonable satisfaction by Seller and Purchaser.

- 3. **CONTINGENCIES.** Notwithstanding any other provision in this Agreement to the contrary, the parties agree that the purchase of the Property is subject to the following contingencies (collectively, the “**Purchaser Contingencies**”) which must be accepted or waived on or before the expiration of the Due Diligence Period hereafter defined, unless a different period is expressly provided herein:

- a. Title to the Property shall be acceptable to Purchaser, in its sole discretion (the “**Title Contingency**”) within the time frames and terms and conditions contained in Paragraph 6.
- b. The Property’s environmental condition shall be acceptable to Purchaser, in its sole discretion. Copies of such environmental assessments shall be provided at no cost to Seller for its use (the “**Environmental Contingency**”). Notwithstanding the foregoing, Purchaser must conduct such review and other matters during the Due Diligence Period and this Environmental Contingency shall expire on the expiration of the Due Diligence Period.
- c. Purchaser shall have the right during the Due Diligence Period to conduct such soil tests/geotechnical analyses, building and property inspections, reviews, environmental assessments (collectively, the “**Physical Reports**”), if any, as Purchaser deems necessary and such Physical Reports and the testing/review required therefore shall be subject to the terms and conditions contained in Paragraph 7. The results of the same shall be satisfactory to Purchaser in its sole discretion (the “**Inspection Contingency**”). Copies of any Physical Reports obtained or commissioned by Purchaser with respect to the Property shall be provided at no cost to Seller, but without any representation as to their accuracy or how the same may be used. To facilitate Purchaser’s due diligence efforts, Seller agrees to deliver copies of all records it has of

the Property in its possession, if any, to Purchaser within 10 days after the Effective Date hereof.

- d. Purchaser may conduct a building analysis test fit plan for the Property during the Due Diligence Period. The results of the same shall be satisfactory to Purchaser in its sole discretion (the “**Building Analysis Contingency**”).
- e. Purchaser obtaining financing acceptable to Purchaser in its sole discretion during the Due Diligence Period (the “**Financing Contingency**”).

Purchaser shall satisfy or waive the Environmental Contingency, the Inspection Contingency, the Building Analysis Contingency, and the Financing Contingency on or before the expiration of the Due Diligence Period and the Title Contingency in the time prescribed in Paragraph 6 or said Contingencies shall be waived.

On or before that date which is 90 days after the Effective Date hereof (the “**Due Diligence Period**”), Purchaser shall, by giving written notice to Seller, either:

- (i) Terminate this Agreement if any one or more of the Purchaser Contingencies above have not been satisfied; or
- (ii) Waive the Contingencies and proceed to closing.

If Purchaser elects to terminate this Agreement under clause (i) above, then upon Seller’s receipt of Purchaser’s written notice of termination, this Agreement shall be null and void, all Earnest Money shall be returned by Title Company to Purchaser, and neither party shall have any further obligation to the other.

If Purchaser elects to waive any of the Purchaser Contingencies and proceed under clause (ii) above, then the Earnest Money shall become non-refundable to Purchaser except in the event of: (a) Seller’s default; or (b) termination pursuant to Section 8 below and the parties shall proceed to Closing as provided in Section 9 below.

4. **REPRESENTATIONS.** The following representations are being made by Seller: (i) that Seller owns fee simple marketable title to the Property; (ii) Seller has no knowledge of any “Hazardous Substance,” “pollutant” or “contaminant” ever being released from any “facility” or “vessel” located on or used in connection with the Property, and has not taken any action in “response” to a “release” in connection with the Property (the terms set within quotation marks shall have the meanings given to them in the federal Comprehensive Environmental Compensation and Liability Act); (iii) as of the Closing, there will be no obligations or liabilities of any kind or nature whatsoever, including but not limited to any tax liabilities, contract liabilities, or tort liabilities for which or to which Purchaser or the Property will be liable or subject except for non-delinquent real estate tax obligations; (iv) there are no storage tanks, underground storage tanks, wells or abandoned wells, or septic systems upon the Property, with the exception of an abandoned septic system that was emptied, crushed, and filled with sand; (v) subject to matters beyond the control of the Seller and reasonable wear and tear, the Property shall be substantially in the same condition at Closing as it is as of the date first written above; and (vi) Seller has not filed, voluntarily or involuntarily for bankruptcy relief within the last year under the United States Bankruptcy Code or has any petition for bankruptcy or receivership been filed against Seller within the last year. These representations shall survive Closing indefinitely.

Except as expressly set forth herein, Seller makes no warranty or representations whatsoever, express or implied, regarding the condition, merchantability, habitability, tenantability, environmental condition, or the fitness for any particular purpose or use, of the Property purchased and sold hereunder. Purchaser acknowledges that it is purchasing the Property “AS IS, WHERE IS, AND WITH ALL FAULTS” and Purchaser for itself and for its successors and assigns hereby waives, releases, and discharges Seller from any and all claims, demands, liabilities, damages, obligations, fines, penalties, costs, and expenses, including (without limitation) reasonable attorneys’ fees and disbursements (collectively, the “**Liabilities**”), and covenants not to sue Seller for any Liabilities caused by, arising out of, or related to the condition of the Property or any matters related to the Property. Notwithstanding anything contained herein to the contrary, the provisions of this paragraph shall survive Closing indefinitely.

5. **SURVEY**. Purchaser may survey the Property at its cost (the “**Survey**”). The Survey must be obtained within 30 days of the date of receipt of the Title Commitment (“**Outside Survey Date**”). Seller shall be provided with a copy of the Survey at no cost for its own use.
6. **EVIDENCE OF TITLE**. Purchaser shall obtain a commitment for an owner’s policy of title insurance (“**Title Commitment**”) from Title Company for the Property within 30 days of the Effective Date. The cost of obtaining such Title Commitment shall be paid by Seller. Purchaser shall be allowed 15 days after the date of receipt of the latter of the Title Commitment or the Survey to examine the same and the making of any objections (the “**Title Objections**”); such objections are to be made to Seller in writing or shall be deemed to have been waived. The Title Objections may include requests for deletion of the survey, mechanic’s liens, and possession standard exceptions and the request for special endorsements for such matters as Purchaser may request. If any Title Objections are so made, Seller shall have 10 days from the date of Seller’s receipt of the Title Objections (“**Outside Seller Response Date**”) to confirm in writing to Purchaser whether it will be able to remove the Title Objections on or prior to the Closing Date, and if not, which of the Title Objections Seller is unwilling to remove; provided, however, that Seller must satisfy any mortgages, monetary liens, or other monetary encumbrances on or prior to the Closing Date. Purchaser shall then have the right to either waive those Title Objections which Seller is unwilling to remove, or to terminate this Agreement on or before the earlier of i) five days after the Outside Seller Response Date; or ii) the end of the Due Diligence Period pursuant to the Title Contingency described in Section 3(a) above. If Seller fails to remove those Title Objections which Seller agrees to remove on or prior to the Closing Date, Purchaser shall have the option of:
 - a. Declaring this Agreement null and void by written notice to Seller, and, in such event, receiving a refund from Seller of all Earnest Money; or
 - b. Waiving any defect in title and, in such event, proceeding to close the transaction contemplated by this Agreement on the Closing Date as defined in Section 9 hereof.

As used in this Agreement, the term “**Permitted Exceptions**” shall mean (i) all matters either shown on the Survey or listed in the Title Commitment to which Purchaser does not raise a Title Objection within the Title Review Period or, having objected, waives as provided above; (ii) ad valorem real estate taxes for the calendar year in which the Closing occurs and subsequent calendar years, not yet due and payable; and (iii) municipal or other governmental zoning laws, regulations and ordinances.

7. **ACCESS TO LAND**. Seller hereby grants to Purchaser and its agents the right of ingress and egress over, under, and through the Property for the purpose of surveying, inspecting, and

testing of the same and making other observations as Purchaser deems necessary, all however, at Purchaser's expense. This includes the right of Seller and its agents to perform soil borings and an environmental assessment of the Property. Purchaser shall reasonably repair any damage caused to the Property as a result of Purchaser's activities such that the Property is returned to substantially the same condition as it existed prior to Purchaser's activities. Purchaser shall ensure that any individual or entity conducting examination of the Property on behalf of Purchaser is licensed and insured. Purchaser agrees to indemnify and hold Seller harmless from all injury, death, or property damage or claim, loss, expense, or lien of any kind whatsoever arising out of or in any way incidental to Purchaser's or its employees, contractors, agents and representatives presence on the Property, however that in no event shall Purchaser be responsible for any conditions discovered by Purchaser. Seller shall reasonably cooperate with Purchaser and its due diligence efforts.

8. **DESTRUCTION OR EMINENT DOMAIN.** If, prior to the Closing Date, all or any substantial part of the improvements on the Property should be destroyed by fire or any other cause, or any insubstantial part of the Property shall be taken by eminent domain, either party shall have the option of canceling this Agreement. If, prior to the Closing Date, all or any substantial part of the Land should be taken, or proceedings are commenced in condemnation with respect thereto, Purchaser shall have the option to terminate this Agreement. Said options provided in this Paragraph, if exercised by Purchaser, must be exercised in writing and delivered to Seller within the earlier of: (i) 10 days after a request by Seller as to whether Purchaser intends to exercise this option; or (ii) the Closing Date. If Purchaser so elects to cancel this Agreement in accordance herewith, this Agreement shall thereafter be of no further force and effect.
9. **CLOSING AND POST-CLOSING.** The consummation of the transaction contemplated by this Agreement ("**Closing**") shall be held at St. Croix Title, 10390 39th Street North, Lake Elmo, Minnesota 55042 (or at such other location as the parties shall agree), on the "**Closing Date**" which shall be a date mutually agreed upon by Seller and Purchaser which is within 30 days after Purchaser has satisfied or waived all contingencies listed in Section 3 above.

9.1 On the Closing Date, Seller shall deliver to Purchaser a warranty deed for the Property, subject to only the Permitted Exceptions (the "**Deed**"); a FIRPTA affidavit; a customary Seller's affidavit; an assignment and assumption of vendor and service contracts (to the extent Purchaser decides to assume any such contracts and they are not terminated), warranties and intangible property in form and substance reasonably required by Seller and Purchaser ("**Assignment and Assumption Agreement**"); assignment and assumptions of all leases; an "as is" Quit Claim bill of sale conveying the Personal Property to Seller; a bring down certificate reaffirming the representations made in Section 4 hereof; an IRS Form 1099-S; and a closing settlement statement reflecting the economic provisions of the Closing as provided in this Purchase Agreement, all in exchange for the payment of the Purchase Price by Purchaser.

On the Closing Date, Purchaser shall deliver to Seller and Title Company the funds required hereunder to satisfy the Purchase Price and as required under the closing statement agreed to among Seller, Purchaser and the Title Company, a customary form Buyer's Affidavit in form and substance reasonably required by the Title Company; the executed Assignment and Assumption Agreement; executed assignments and assumptions of all leases; evidence reasonably satisfactory to Seller and the Title Company that the signatory has the full right, power, and authority to sign on behalf of Purchaser, a closing statement pursuant to the terms

and conditions of this Agreement, and such other documents as may be reasonably required by the Title Company.

General real estate taxes applicable to the Property due and payable in the year of Closing shall be prorated between Seller and Purchaser on a daily basis with Seller paying those allocable to the period prior to the date of Closing and Purchaser being responsible for those allocable to the date of Closing and thereafter. Any real estate taxes due and payable in the years prior to Closing, including any deferred real estate taxes, penalties or interest shall be paid by Seller. Seller shall pay all special assessments levied against the Property in the year 2017 or prior years. Purchaser shall pay all special assessments pending or levied in the year 2018 or future years. Notwithstanding the foregoing, at the Closing, Seller shall pay all state or local transfer, conservation fees, or deed taxes in connection with the Deed to be delivered by Seller to Purchaser. Seller shall pay recording fees of instruments required to establish marketable title in Seller. Seller shall pay the cost for preparation of the Commitment. Purchaser shall pay recording charges in connection with the Deed, as well as the costs of any due diligence reports which Purchaser may have ordered regarding environmental conditions, soils conditions, building analysis test fit plan, or other aspects of the Property. Purchaser shall pay the cost of its title insurance premium and any policy endorsements it desires. Purchaser and Seller shall equally split any closing charges. Seller shall be responsible for satisfying, out of the Purchase Price or otherwise, all mortgages and liens against the Property as of Closing. Each party shall be responsible for its own legal counsel fees.

10. **OPERATION PRIOR TO CLOSING.** During the period from the date of Seller's acceptance of this Agreement through the Closing Date (the "**Executory Period**"), Seller shall operate and maintain the Property in the ordinary course of business in accordance with commercially reasonable business practices and standards, including but not limited to maintaining adequate liability insurance and insurance against loss by fire, windstorm, and other hazards, casualties, and contingencies, including vandalism and malicious mischief. Seller shall bear the risk of loss or damage caused by any perils through the Executory Period.
11. **AUTHORITY.** Each person executing this Agreement, by his or her execution hereof, represents and warrants that he or she is fully authorized to do so, and that no further action or consent on the part of the party for whom he or she is acting is required for the effectiveness and enforceability of this Agreement against such party following such execution.
12. **BROKER'S FEES.** Seller has engaged Eric King of Cushman & Wakefield as its broker in this transaction. Seller shall be responsible for paying its broker's fees. Seller and Purchaser hereby represent and warrant to the other party that, in connection with this transaction, no other third-party broker or finder has been engaged or consulted by it or through such party's actions (or claiming through such party) and is entitled to compensation as a consequence of this transaction. Seller and Purchaser agree to indemnify, defend, and hold the other party harmless against any and all claims of brokers, finders, or the like, and against the claims of all third parties, claiming any right to commission or compensation by or through acts of the indemnifying party or its partners, agents, or affiliates in connection with this Agreement. The indemnifying party's indemnity obligations shall include all damages, losses, costs, liabilities, and expenses, including reasonable attorneys' fees and litigation costs, which may be incurred by the other party.
13. **RELOCATION BENEFITS; INDEMNIFICATION.** Seller acknowledges that it is being displaced from the Property as a result of the transaction contemplated by this Agreement and that Seller may be eligible for relocation assistance and benefits and that the Purchase Price includes

compensation for any and all relocation assistance and benefits for which Seller may be eligible and Seller agrees to waive any and all further relocation assistance benefits. The provisions of this paragraph shall survive closing of the transaction contemplated by this Agreement.

14. **NOTICES.** Any notice or election herein required or permitted to be given or served by either party hereto upon the other shall be deemed given or served in accordance with the provisions of this Agreement, if personally served; sent via telephonic facsimile; delivered by nationally recognized overnight courier (Fed Ex, UPS, DHL, *etc.*); or if mailed by United States registered or certified mail, postage prepaid, properly addressed as follows:

If to Seller: Lake Elmo Associates LLP
3880 Laverne Avenue North
Lake Elmo, MN 55042
Attn: John Zignego

with a copy to: Cushman & Wakefield
3500 American Boulevard W, Suite 200
Minneapolis, MN 55431
Attn: Eric King, Senior Director – Brokerage Services

If to Purchaser: City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042
Attn: City Administrator

with a copy to: Kennedy & Graven, Chartered
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
Attn: Sarah J. Sonsalla

Each mailed notice or communication shall be deemed to have been given to, or served upon, the party to which it is addressed on the third date after the same is deposited in the United States registered or certified mail, if postage prepaid, properly addressed in the manner above provided, if sent by overnight mail it shall be deemed delivered the day after deposit with the overnight courier, or on the date of delivery if by other means as allowed above, and if by telephonic facsimile, with confirmation of successful transmission. The addresses to which notices are to be mailed to either party hereto may be changed by such party by giving written notice thereof to the other party in the manner above provided.

15. **DEFAULT.** In the event of a default by Seller hereunder, Purchaser may terminate this Purchase Agreement, and receive from Seller a return of all Earnest Money, or, bring an action to compel the specific performance of this Agreement in a court of law or equity. In the event of a default by Purchaser hereunder, Seller may terminate this Agreement by providing 30 days written notice as provided by Minnesota Statutes, and subsequent to such termination, retain the Earnest Money, and any interest accrued thereon, paid by Purchaser hereunder as its sole and exclusive remedy.
16. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which will, for all purposes, be deemed to be an original, and all of which are identical. This Agreement may further be evidenced by facsimile and email scanned signature pages.

17. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the state where the Property is located.
18. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, understandings either oral or written, between them concerning the Property. No subsequent alteration, amendment, change, deletion, or addition to this Agreement shall be binding upon any of the parties hereto unless in writing and signed by both the party against whom enforcement thereof is sought.
19. **FURTHER ASSURANCES.** Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement.
20. **NO THIRD PARTY BENEFICIARIES.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.
21. **SECTION 1031 EXCHANGE.** If either party desires to have this transaction constitute a like-kind exchange of properties utilizing the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended, each party agrees to cooperate with the other party in order to effectuate and facilitate such an exchange, provided that: (a) the exchange does not delay the Closing under this Agreement, (b) the non-exchanging party does not incur any additional liability as a result of its cooperation, and (c) the non-exchanging party is not required to enter into any contract to purchase any other property, or take title to any property other than the Real Property. In particular, either party may assign its rights under this Agreement prior to Closing to a “**Qualified Intermediary**,” as that term is defined in applicable Treasury Regulations; and Purchaser will, upon request of Seller, pay the balance of the Purchase Price to the Qualified Intermediary designated by Seller.
22. **ASSIGNS.** This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective legal representatives, successors, and permitted assigns. Purchaser may assign this Agreement to the Lake Elmo Economic Development Authority (the “**EDA**”) if Purchaser determines that the EDA is able to obtain more favorable financing. Purchaser shall obtain the prior written consent of Seller for any other assignment.
23. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
24. **RULE OF CONSTRUCTION.** The parties acknowledge that each party and its counsel has reviewed and revised this Agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.
25. **MISCELLANEOUS.** All times specified in this Agreement shall be of the essence of this Agreement. If any date set forth for the performance of any obligations by Seller or Purchaser or

for the delivery of any instrument or notice should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. The term “legal holiday” means any state or federal holiday on which financial institutions or post offices are generally closed in the state of Minnesota.

26. **WAIVER**. The waiver by any party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Agreement.

IN WITNESS WHEREOF, the parties have entered into and executed this Agreement the day and year first above written.

SELLER:

LAKE ELMO ASSOCIATES LLP

PURCHASER:

CITY OF LAKE ELMO

By: _____

Its: _____

Date: _____

By: _____

Mike Pearson

Its: Mayor

Date: _____

By: _____

Julie Johnson

Its: City Clerk

Date: _____

The undersigned agrees to act as Title Company and hold in trust the Earnest Money pursuant to the terms of this Agreement. Receipt of the Earnest Money of \$40,000.00 is hereby acknowledged.

ST. CROIX TITLE

By: _____

Its: _____

EXHIBIT A

Legal Description of the Land

The North 126.89 feet of Lot 1, Block 2, Brookman Addition, according to the plat thereof on file and of record in the office of the County Recorder, Washington County, Minnesota, lying easterly of the West 199.91 feet thereof.

(PIN: 13.029.21.22.0025)
(.58 acre parcel)

AND

The North 350.18 feet of Lot 1, Block 2, Brookman Addition, according to the plat thereof on file and of record in the office of the County Recorder, Washington County, Minnesota, except the West 199.91 feet of the North 126.89 feet of said Lot 1, Block 2, Brookman Addition; also except the North 126.89 feet of said Lot 1, Block 2, Brookman Addition, lying easterly of the West 199.91 feet thereof.

(PIN: 13.029.21.22.0026)
(2.06 acre parcel)



January 5, 2018

Kristina Handt
The City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

**Subject: Proposal for Property Condition and Phase I Environmental Site Assessment
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042**

Dear Ms. Handt,

Coastal Ecology Group, LLC (DBA CEG Assessments and henceforth referred to as CEG) is pleased to provide the City of Lake Elmo ("the Client") with the following proposal to provide a Property Condition Assessment (PCA) and Phase I Environmental Site Assessment for 3880 Laverne Ave North, Lake Elmo, MN ("the Project").

Project Information

Based on information provided by the Client, CEG understands the property consists of one parcel improved with an 18,000 SF building located at 3880 Laverne Ave North, Lake Elmo, MN.

Scope of Work- ESA

CEG will perform the ESA in general accordance with ASTM E1527-13 Standard Practice for Environmental Site Assessments: Phase I Site Assessment Process, consistent with a level of care and skill ordinarily practiced by the environmental consulting profession currently providing similar services under similar circumstances. The scope of work will include an evaluation of:

The Project history in an attempt to identify any possible ownership(s) and/or uses that would suggest an impact to the environmental integrity of the Project as identified through review of reasonably ascertainable standard historical sources.

Physical characteristics of the Project as identified through review of reasonably ascertainable topographic maps.

Current Project conditions (as applicable), including compliance with appropriate regulations as they pertain to the presence or absence of:

Facility storage tanks, drums, containers (above or below ground), etc.

Transformers and other electrical equipment which utilize fluid which may potentially contain polychlorinated biphenyls (PCBs)

The use of hazardous materials/chemicals and petroleum products, and/or the generation, treatment, storage, or disposal of hazardous, regulated, or medical wastes

An evaluation of information contained in programs such as the NPL, CERCLIS, SHWS, RCRIS, SWF, LUST, and other governmental information systems within specific search distances of the Project. This evaluation will be performed to identify any sites that may have the potential to impact the environmental integrity of the Project. The regulatory agency report provided is based on an evaluation of the data collected and compiled by a contracted data research company. The report is based on a radius search which focuses on both the Project and neighboring sites that may



impact the Project. Neighboring sites listed in governmental environmental records are identified within a specific search distance. The search distance varies depending upon the particular government record being checked. The search is designed to meet the requirements of ASTM Standard E 1527-13. The information provided is assumed to be correct and complete.

Visual observation of the Project and adjacent properties and review of readily available historical and regulatory information to identify the potential for known or suspected migration of hazardous substances or petroleum products in any form, including solid and liquid at the surface or subsurface, and vapor in the subsurface.

Note: This assessment is not intended to comply with E2600 Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions.

In addition, at the Client's request, the assessment will include the following non-scope items:

A review of the physical characteristics of the Project as identified through review of reasonably ascertainable wetlands, floodplain, soils, geology, and groundwater data.

A screening approach for the potential existence of:

Asbestos, including the identification of all suspect materials in accessible areas (interior and exterior). These materials are considered suspect, until tested and proven otherwise. Friable materials are those that can be easily crumbled or pulverized by hand pressure. This screening approach is not a comprehensive (i.e., AHERA-Style) asbestos survey, nor is it intended to fulfill the NESHAP requirements for demolition/renovation purposes, but it is intended to identify the potential for an asbestos hazard in accessible areas. This screening is not intended to be used for demolition, abatement, renovation, or repair work. The basis for "suspect" determination is taken from the materials listed in Appendix G of the United States Environmental Protection Agency (USEPA) publication *Managing Asbestos in Place* (the "Green Book"). Therefore, all materials listed in the Green Book that were installed prior to 1981 are considered suspect with the exception of resilient floor tile, asbestos-cement board (transite), and roofing felt, which are considered suspect, regardless of installation date (these materials continue to be manufactured and installed in the United States). Sampling will not be performed as a part of this assessment.

Radon gas propensity, through the review of the USEPA's Map of Radon Zones for all properties. Sampling will not be performed as a part of this assessment.

Lead-based paint for all properties constructed prior to 1978. The basis for this determination is taken from the Lead Paint Poisoning Act passed by the Congress of the United States that banned the use of lead paint starting January 1, 1978. Therefore, all paint applied prior to 1978 is considered suspect. Sampling will not be performed as a part of this assessment.

Lead in water, based on information provided by the municipal water provider. Sampling will not be performed as a part of this assessment.

Mold, including the identification of visible mold growth, conditions conducive for mold growth, and evidence of moisture in accessible areas of the Project. In addition, CEG will interview Project personnel regarding any known or suspected mold contamination, water intrusion, or mildew like odor problems. Sampling will not be performed as a part of this assessment. CEG notes that this assessment does not constitute a comprehensive mold survey of the Project, and the conclusions made will be based solely on observable conditions in readily accessible interior areas of the Project on the assessment date.

Scope of Work- PCA

CEG will perform the PCA in general accordance with *ASTM E2018-15 Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process*, consistent with a level of care and skill ordinarily practiced by the building science consulting profession currently providing similar services under similar circumstances. The scope of work will include:

- Reconnaissance of the Project to evaluate the general condition of the building and site improvements, review available construction documents relevant to in-place construction systems, life safety, mechanical, electrical, and plumbing systems, and the general built environment.



- Identification of items/systems representative of deferred maintenance and provide cost estimates based on observed conditions, maintenance history and industry standard useful life estimates.
- Review of documented capital improvements completed within the last five-year period and work currently contracted for, if applicable.
- Provide a full description of the Project with descriptions of in-place systems and commentary on observed conditions.
- Provide a *Limited Tier I Survey* of the Project's compliance to Title III of the Americans with Disabilities Act. This will not constitute a full ADA survey.
- Perform a limited assessment of accessible areas of the building(s) for the presence of mold, conditions conducive to mold growth, and/or evidence of moisture. Interviews with Project personnel regarding the presence of any known or suspected mold, elevated relative humidity, water intrusion, or mildew-like odors will similarly be performed. Potentially affected areas will be photographed. Sampling will not be considered in routine assessments.
- Review maintenance procedures with the in-place maintenance personnel.
- Observe a representative sample of the interior tenant spaces/units, including vacant spaces/units, in order to gain a clear understanding of the Project's overall condition. Other areas to be observed include the exterior of the Project, the roofs, interior common areas, and mechanical, electrical and elevator equipment rooms.
- Appropriate inquiries of municipal officials regarding the existence of pending unresolved building, zoning or fire code violations on file, and a determination of the current zoning category, flood plain zone, and seismic zone for the Project.
- Provide recommendations for additional studies, if required, with related budgetary information.

In addition, the assessment will include the following non-scope items:

- Project disclosure information is obtained from CEG's *Pre-survey Questionnaire* (copy included in the Appendices)
- Preparation of the *Modified Capital Reserves Schedule* based upon a 7 year reserve term
- Provide a statement on the Project's Remaining Useful Life
- Determination of Federal Emergency Management Agency (FEMA) Flood Plain Zone and geographic Uniform Building Code Seismic Zone

The following items are excluded from ASTM 2018-15, and are considered outside the scope of a PCA:

- Utilities: Operating conditions of any systems or accessing manholes or utility pits.
- Entering of crawl or confined space areas, determination of previous substructure flooding or water penetration unless easily visible or if such information is provided.
- Walking on pitched roofs, or any roof areas that appear to be unsafe, or roofs with no built-in access, or determining any roofing design criteria.
- Determining adequate pressure and flow rate, fixture-unit values and counts, or verifying pipe sizes and verifying the point of discharge for underground systems.



- Observation of flue connections, interiors of chimneys, flues or boiler stacks, or tenant-owned or maintained equipment.
- Evaluation of process related equipment or condition of tenant owned/maintained equipment.
- Removing of electrical panel covers, except if removed by building staff, EMF issues, electrical testing, or operating of any electrical devices. Process related equipment or tenant owned equipment.
- Examining of cables, sheaves, controllers, motors, inspection tags, or entering elevator/escalator pits or shafts.
- Determining NFPA hazard classifications, classifying, or testing fire rating of assemblies.
- Operating appliances or fixtures, determining or reporting STC (Sound Transmission Class) ratings, and flammability issues/regulations.
- Testing, measuring, or preparing calculations for any system or component to determine adequacy, or compliance with any standard.
- Removing or relocating materials, furniture, storage containers, personal effects, debris material or finishes; conducting exploratory probing or testing; dismantling or operating of equipment or appliances; or disturbing personal items or Project which obstructs access or visibility.
- Preparing engineering calculations (civil, structural, mechanical, electrical, etc.) to determine any system's, component's, or equipment's adequacy or compliance with any specific or commonly accepted design requirements or building codes, or preparing designs or specifications to remedy any physical deficiency.
- Taking measurements or quantities to establish or confirm any information or representations provided by the owner or user such as: size and dimensions of the subject Project or subject building, any legal encumbrances such as easements, dwelling unit count and mix, building Project line setbacks or elevations, number and size of parking spaces, etc.
- Reporting on the presence or absence of pests such as wood damaging organisms, rodents, or insects unless evidence of such presence is readily apparent during the course of the field observer's walk-through survey or such information is provided to the consultant by the owner, user, Project manager, etc. The consultant is not required to provide a suggested remedy for treatment or remediation, determine the extent of infestation, nor provide opinions of probable costs for treatment or remediation of any deterioration that may have resulted.
- Reporting on the condition of subterranean conditions such as underground utilities, separate sewage disposal systems, wells; systems that are either considered process-related or peculiar to a specific tenancy or use; waste water treatment plants; or items or systems that are not permanently installed.
- Entering or accessing any area of the premises deemed to pose a threat of dangerous or adverse conditions with respect to the field observer or to perform any procedure, which may damage or impair the physical integrity of the Project, any system, or component.
- Providing an opinion on the condition of any system or component, which is shutdown, or whose operation by the field observer may significantly increase the registered electrical demand-load.
- Evaluating acoustical or insulating characteristics of systems or components.
- Providing an opinion on matters regarding security of the subject Project and protection of its occupants or users from unauthorized access.
- Operating or witnessing the operation of lighting or other systems typically controlled by time clocks or that are normally operated by the building's operation staff or service companies.



- Providing an environmental assessment or opinion on the presence of any environmental issues such as asbestos, hazardous wastes, toxic materials, the location and presence of designated wetlands, IAQ, etc.

CEG is merely providing an opinion. The PCA may not be construed as either a warranty or guarantee of any of the following:

- Any system's or component's physical condition or use, nor is a PCA to be construed as substituting for any system's or equipment's warranty transfer inspection.
- Compliance with any federal, state, or local statute, ordinance, rule or regulation including, but not limited to, building codes, safety codes, environmental regulations, health codes or zoning ordinances or compliance with trade/design standards or the standards developed by the insurance industry. However, should there be any conspicuous material present violations observed or reported based upon actual knowledge of the field observer or the PCA reviewer, they should be identified in the PCA.
- Compliance of any material, equipment, or system with any certification or actuation rate program, vendor's or manufacturer's warranty provisions, or provisions established by any standards that are related to insurance industry acceptance/approval such as FM, State Board of Fire Underwriters, etc.

Fees, Schedule and Deliverable

CEG will perform the above scope of work based on a fee of \$3,300.00. This fee is considered lump-sum and will not be exceeded without prior authorization from the Client. CEG will prepare and furnish one electronic copy of a final report of investigation, which will include an executive summary and recommendations section in accordance with industry standards. Submittal of the final deliverable is anticipated within 15 business days of receipt of this executed proposal.

Client Responsibilities and Authorization

The proposed fee and schedule are based on Client responsibilities that include, but are not limited to, providing timely access to the entire Project, providing accurate Project location information, providing access to knowledgeable building maintenance and engineering staff, and providing available documentation.

CEG appreciates the opportunity to submit this proposal. If this proposal is deemed acceptable, please provide an executed copy of the attached Property Condition Services Assessment Agreement to the undersigned. Should you have any questions or require additional information, please do not hesitate to contact the undersigned at 866.557.6564 Ext. 140 or 480.652.5773.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert A. Tootle", is written over a light blue horizontal line.

Robert A. Tootle
Director of National Sales
CEG Assessments, LLC

Attachments: Combo Services Assessment Agreement



SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 5th day of January, 2018, by and between The City of Elmo Lake having offices at 3800 Laverne Avenue North, Lake Elmo, MN 55042, hereinafter referred to as the "CLIENT" and Coastal Ecology Group, LLC, hereinafter referred to as "CEG." CEG Assessments is a registered "doing business as" name of Coastal Ecology Group, LLC.

WHEREAS, the CLIENT desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, CEG represents that CEG is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties agree as follows:

1. **Scope of Services:** CEG shall perform such services and accomplish such tasks, including furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as CEG responsibilities throughout this agreement and incorporated herein as the "Project."
2. **Delivery Schedule:** CEG will provide a report within 15 business days of execution of this contract.
3. **Project Address:** CEG is conducting the Assessment on a property located at: 3880 Laverne Avenue North, Lake Elmo, MN 55042.
4. **"Project":** CEG agrees to provide the CLIENT with a Phase I Environmental Site Assessment performed to ASTM E1527-13 standards and Property Condition Assessment performed to ASTM 2018-08 standards.
5. **Limitation of Liability:** Client agrees to limit CEG's liability to the maximum value of this agreement.
6. **Report Format:** CEG will prepare and furnish one (1) electronic copy of each final report of investigation, which will include an executive summary and recommendations section in accordance with industry standards.
7. **Fees:** Costs are based on a per unit/site cost.
Number of Sites: One (1) Price Per Site: \$3,300.00 Project Total: \$3,300.00
8. **Payment:** CLIENT agrees and understands that payment is due upon receipt of report.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CLIENT:

CEG:

Date: _____

Date: _____