



STAFF REPORT

DATE: October 18, 2022

CONSENT

AGENDA ITEM: NorthPoint Settlement and Release Agreement

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

At the June 15, 2021 Council meeting, council approved a purchase agreement with NorthPoint Development for the 77 acres south of CSAH 14 and east of Ideal Ave. Amendment #1 was approved in October. Driven by timeline concerns and sewer obligations, staff worked with NorthPoint on another amendment and the 2nd amendment was approved in April.

ISSUE BEFORE COUNCIL:

Should the Council approve the Settlement and Release Agreement with NorthPoint Development?

PROPOSAL:

Due to a change in circumstances, NorthPoint no longer desires to purchase the Property from the City and wishes to terminate the Sale Contract. The Settlement and Release Agreement included in your packet would terminate the contract. The City would receive \$370,000 of the Earnest money along with copies of the materials from the due diligence period.

OPTIONS:

- 1) Approve the Settlement and Release Agreement
- 2) Amend and then Approve the Settlement and Release Agreement
- 3) Do not approve the Settlement and release Agreement

FISCAL IMPACT:

Since the land is an asset of the water fund, the \$370,000 would be placed in the water fund once received.

RECOMMENDATION:

If removed from the consent agenda:

“Motion to approve the Settlement and Release Agreement with NorthPoint LLC.”

ATTACHMENT:

- Settlement and Release Agreement

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT dated as of October __, 2022 (this “**Agreement**”), between City of Lake Elmo, a Minnesota municipal corporation (the “**City**”) and NorthPoint Development, LLC, a Missouri limited liability company (“**NorthPoint**” and together with the City, the “**Parties**”, and each, a “**Party**”).

WHEREAS, the City, as Seller, and NorthPoint, as Buyer, entered that certain Real Estate Sale Contract effective June 17, 2021 (collectively, together with the First Amendment and Second Amendment, as defined below, referred to as the “**Sale Contract**”), pursuant to which Buyer intended to purchase certain real property owned by the City comprising of approximately 75 acres located at Ideal Avenue, South of CSAH 14, Lake Elmo, Minnesota, Washington County, Minnesota (a portion of Tax ID 16.029.21.24.0002) (the “**Property**”); and

WHEREAS, the Sale Contract was amended by the City and NorthPoint on October 5, 2021 by entering into the First Amendment to Real Estate Sale Contract (the “**First Amendment**”); and

WHEREAS, the Sale Contract was amended by the City and NorthPoint on April 5, 2022 by entering into the Second Amendment to Real Estate Sale Contract (the “**Second Amendment**”); and

WHEREAS, due to a change in circumstances, NorthPoint no longer desires to purchase the Property from the City and wishes to terminate the Sale Contract; and

WHEREAS, the City is willing to allow NorthPoint to terminate the Sale Contract provided that it is permitted to retain a portion of the Earnest Deposit as compensation for the Property being taken off of the market for 16 months; and

WHEREAS, in addition to the foregoing, the Parties desire to execute and deliver mutual releases on the terms and conditions set out herein.

NOW, THEREFORE, in consideration of the premises set out above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Capitalized terms used and not defined in this Agreement have the respective meanings assigned to them in the Sale Contract.

2. **Termination Payment; Certain Rights and Obligations.** As material consideration for

the covenants, agreements, and undertakings of the Parties under this Agreement:

(a) Upon execution of this Agreement by both Parties, the Escrow Agent shall transfer either by wire transfer or certified check \$370,000.00 of the Earnest Deposit to the City. The remaining amount of the Earnest Deposit, less any fees charged by the Escrow Agent for the escrow, shall be transferred by the Escrow Agent to NorthPoint. NorthPoint shall be responsible for paying any other costs owed to the Escrow Agent for the transaction contemplated under the Sale Contract.

(b) The Parties agree that upon execution of this Agreement by both Parties, the Sale Contract is terminated and no longer in effect.

(c) The Parties agree that all land use applications that were submitted by NorthPoint to the City for the Property are hereby officially withdrawn by NorthPoint and will not be processed by the City as NorthPoint is no longer purchasing the Property.

(d) NorthPoint shall provide the City with the Due Diligence Materials and will generally work together with the City in good faith, as requested by the City, to complete any necessary documentation that will allow the City to utilize the Due Diligence Materials in the future. The “**Due Diligence Materials**” consist of the following, as they relate to the Property: (i) all materials used to complete the AUAR, (ii) any geotechnological surveys, (iii) the ALTA survey, (iv) the Phase 1 environmental site assessment, and (v) the US Department of Transportation (DOT) train inventory counts.

3. **Mutual Release.**

(a) In consideration of the covenants, agreements, and undertakings of the Parties under the Sale Contract, and this Agreement, effective upon the satisfaction of the Parties’ obligations under Section 2 of this Agreement, each Party, on behalf of itself and its respective present and former parents, subsidiaries, affiliates, employees, officers, officials, directors, shareholders, managers, members, successors, and assigns (collectively, “**Releasor**”) hereby releases, waives, and forever discharges the other Party and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, officials, directors, shareholders, managers, members, agents, representatives, permitted successors, officials and permitted assigns (collectively, “**Releasee**”) of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, admiralty, or equity (collectively, “**Claims**”), which any of such Releasor ever had, now has, or hereafter can, shall, or may have against the Releasee for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of time through the date of this Agreement arising out of or relating to this Agreement and the Sale Contract, the First Amendment, and the Second Amendment.

(b) Each Releasor understands it may later discover Claims or facts that may be different from, or in addition to, those it now knows or believes to exist regarding the subject matter of

the release contained in this Section 3, and which, if known at the time of signing this Agreement, may have materially affected this Agreement and such Party's decision to enter into it and grant the release contained in this Section 3. Nevertheless, the Releasor intends to fully, finally, and forever settle and release all Claims that now exist, may exist, or previously existed, as set out in the release contained in this Section 3, whether known or unknown, foreseen or unforeseen, or suspected or unsuspected, and the release given herein is and will remain in effect as a complete release, notwithstanding the discovery or existence of such additional or different facts. The Releasor hereby waives any right or Claim that might arise as a result of such different or additional Claims or facts.

4. **Representations and Warranties.** Each Party hereby represents and warrants to the other Party that:

(a) It has the full right, corporate power, and authority to enter into this Agreement, to grant the release contained herein and to perform its obligations hereunder.

(b) The execution of this Agreement by the individuals whose signatures are set out at the end of this Agreement on behalf of such Party, and the delivery of this Agreement by such Party, have been duly authorized by all necessary corporate action on the part of such Party.

(c) This Agreement has been executed and delivered by such Party and (assuming due authorization, execution, and delivery by the other Party hereto) constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(d) It (i) knows of no Claims against the other Party relating to or arising out of the Agreement that are not covered by the release contained in Section 3 and (ii) has neither assigned nor transferred any of the Claims released herein to any person or entity and no person or entity has subrogated to or has any interest or rights in any Claims.

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 4 OF THIS AGREEMENT, (A) NEITHER OF THE PARTIES HERETO NOR ANY PERSON ON SUCH PARTY'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT, IN ENTERING INTO THIS AGREEMENT, IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY, OR ANY OTHER PERSON ON SUCH OTHER PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 4.

5. Miscellaneous.

(a) This Agreement and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Minnesota, United States of America, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Minnesota. Any legal suit, action or proceeding arising out of or relating to this Agreement must be instituted in the federal courts of the United States of America or the courts of the State of Minnesota, in each case located in the County of Washington and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(b) This Agreement, and each of the terms and provisions hereof, may only be amended, modified, waived, or supplemented by an agreement in writing signed by each Party.

(c) No Party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement will inure to the benefit of and be binding on each of the Parties and each of their respective permitted successors and permitted assigns.

(d) This Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this Agreement electronically or by DocuSign shall be effective as delivery of an original executed counterpart of this Agreement.

(e) This Agreement is the sole and entire agreement of the Parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

(f) Each Party shall pay its own costs and expenses in connection with the drafting, negotiation, and execution of this Agreement (including the fees and expenses of its advisors, accountants, and legal counsel).

(g) This Agreement benefits solely the Parties hereto and their respective permitted successors and permitted assigns, and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY:

CITY OF LAKE ELMO

a Minnesota municipal corporation

By: _____

Charles Cadenhead

Its: Mayor

By: _____

Julie Johnson

Its: City Clerk

NORTHPOINT:

NORTHPOINT DEVELOPMENT, LLC,

a Missouri limited liability company

By: _____ 

Name: Nathaniel Hagedorn

Its: Manager