



Request for City Council Committee Action From the Department of Public Works

Date: April 22, 2009

To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

Subject: **Sale of City-Owned Property at 2850 20th Avenue**

Recommendation:

Receive and File staff report on the sale of city-owned property at 2850 20th Avenue.

Previous Directives:

- March 30, 2007: Amend Contract with Midtown Eco Energy LLC to:
 - Extend option up to one calendar year (from March 30, 2007 to March 30, 2008).
 - Extend required closing date up to one calendar year (from October 2, 2007 to October 2, 2008), maintaining the requirement that any closing after October 2, 2007 include a holding cost payment of \$125.00 per day.
 - Establish a minimum of 130 calendar days between the option and closing dates.
 - Require that any closing date after October 1, 2007 would be conditioned on an update of the appraisal to reflect current market value and that sale price be adjusted appropriately.
- June 30, 2006: Direct City staff to negotiate and execute a purchase agreement in accordance with the requirements of the Request for Proposals to Midtown Eco Energy, LLC for \$557,500.
- June 16, 2006: Set Public Hearing for June 20, 2006 for Proposed Sale.
- March 31, 2006: Direct City Engineer to issue a Request for Proposals (RFP) for the sale of the South Transfer Station for the purpose of a biomass combined heat and power generation facility.
- December 23, 2005: Direct City staff to return to the T&PW and HEE Committees with RFP, or a recommendation of an alternative to the RFP process for the development of the South Transfer Station into a biomass combined heat and power generation facility before the City Council meeting of March 31, 2006. If an RFP is issued, it shall be issued no later than April 4, 2006, with a response date of no later than May 12, 2006 and shall include the following criteria: Project description, Project management and team, Site purchase price and terms, Predevelopment sources and uses budget, Construction sources and uses budget, Operating pro-forma, Project time line with milestones, and a description of the community benefit and impact.
- July 23, 2004: Direct the proper City officers to continue negotiations for the sale of the City of Minneapolis South Transfer Station located at 2850 20th Av S, with the Green Institute for the purpose of a proposed combined heat and power biomass plant.

- May 14, 2004: Direct the proper City officers to negotiate terms and conditions of an option for the sale of the City-owned property at 2850 20th Avenue South to the Green Institute for the purpose of a proposed combined heat and power biomass plant and to return to the T&PW Committee by its July 13, 2004 meeting with proposed terms and conditions for such an option. By this action, the Council expressed its will as to the preferred disposition of the South Transfer Station if it is sold, but reserved the decision to sell it pending review of Solid Waste planning.

Prepared by: Greg Goeke, Director of Property Services, Property Services (673-2706)

Approved by:

Steven A. Kotke, P.E., City Engineer, Director of Public Works

Presenters: Greg Goeke, Director of Property Services, Property Services

Reviews

Permanent Review Committee (PRC):	Approval	NA	Date
Civil Rights Affirmative Action Plan	Approval	NA	Date
Policy Review Group (PRG):	Approval	NA	Date

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget (If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Business Plan: Action is within the plan. Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's Finance Dept. contact when provided to the Committee Coordinator

Community Impact

- Neighborhood Notification: Not Applicable
- City Goals: Not Applicable
- Comprehensive Plan: Not Applicable
- Zoning Code: Not Applicable

Background/Supporting Information

On March 28, 2006, Council directed staff to issue a Request for Proposals (RFP) to solicit proposals for the sale of the South Transfer Station, 2850 20th Avenue South, for development into a biomass combined heat and power generation facility. The RFP was issued on April 4, 2006. Proposals were due on May 19, 2006.

On June 30, 2006, Council directed staff to negotiate and execute a purchase agreement (Option Agreement) in accordance with the requirements of the Request for Proposals to Midtown Eco Energy, LLC ("MEE") for \$557,500.

Option Agreement - Requirements and Time

The Option Agreement established the date of December 31, 2006 for the buyer, MEE, to exercise an option to purchase the property and to close on the property no later than October 2, 2007. The Option Agreement also defined requirements for both exercising the option (Option Requirements) and closing on the property (Closing Requirements).

Buyer Requests for Extension of Time

The Option Agreement allowed for a one time 90-day extension on the option date if the buyer could establish "substantial progress" towards meeting the deliverables necessary to close on the property. The extension was requested by MEE and granted by Public Works staff. Any other extensions or modifications to the terms of the Purchase Agreement require Council action and approval.

On March 30, 2007, at the request of MEE, the City Council authorized an amendment to the Option Agreement (Contract #C- 23613) to:

- Extend the option exercise date up to one calendar year (from March 30, 2007 to March 30, 2008).
- Extend required closing date up to one calendar year (from October 2, 2007 to October 2, 2008), maintaining the requirement that any closing after October 2, 2007 include a holding cost payment of \$125.00 per day.
- Establish a minimum of 130 calendar days between the option and closing dates.
- Require that any closing date after October 1, 2007 would be conditioned on an update of the appraisal to reflect current market value and that sale price be adjusted appropriately.

Additionally, at the request of the buyer MEE, staff agreed to modify Section 4.2.4 of the Option Requirements as it pertained to an executed power purchase agreement such that instead of requiring an executed power purchase agreement at the time MEE executed the Option, the City agreed to accept a demonstration that MEE had a commitment to enter into a power purchase agreement from a public utility company provided that the commitment could be subject to reasonable conditions.

On March 14, 2008 staff received a request from MEE to extend the date to exercise the option an additional five (5) calendar months from March 30, 2008 to August 30, 2008. At that point, the request for an extension would not have reached the full City Council by the March 30, 2008 deadline. The request was not placed on the agenda for the March 25, 2008 Transportation and Public Works Committee meeting. MEE was informed of this decision.

Buyer's Intent to Exercise the Option and Option Requirements

On March 21, 2008 staff received a letter from MEE (including supporting documents and cashier's check) giving notice to the City of MEE's intent to exercise their option. Staff immediately began its review of the supporting documents to determine if the Option Requirements of the Purchase Agreement had been met.

On March 26, 2008 a staff team comprised of Steven Kotke, Patrick Born, Shelley Roe and Greg Goeke completed its review and determined that MEE had not met the requirement of Section 4.2.4 requiring, in part, that MEE has a commitment to enter into a power purchase agreement, subject to reasonable conditions. Staff notified MEE (via telephone call and in writing) of the City's determination and notified them that they had until March 30, 2008 to submit any additional information they had to demonstrate that they had met the Option Requirements.

On March 27, 2008 a meeting was held with staff and representatives of MEE to discuss the Option Requirements. Later that day, at the request of City staff, Midtown Eco Energy provided an additional letter documenting their progress to date working with Xcel Energy on a Power Purchase Agreement. In the letter Midtown Eco Energy gave staff permission to contact a representative from Xcel Energy. Staff reviewed the letter and made contact with the designated representative from Xcel Energy.

Staff Determination

On April 7, 2008 Steven A. Kotke, Director of Public Works, informed Midtown Eco Energy in writing the City's determination that MEE had not timely demonstrated that they had a commitment to enter into a power purchase agreement and that the City would begin the process to statutorily cancel the Option Agreement.

Statutory Cure Period

On April 9, 2008 Midtown Eco Energy was served legal documents as required to cancel the Option Agreement. By being served on April 9, the 60 day Cure Period begins. MEE will have until Monday, June 9, 2008 to meet the requirements and reinstate the contract.