



Larkin Hoffman Daly & Lindgren Ltd.

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December 3, 2012

City of Ramsey  
Attention: City Administrator  
7550 Sunwood Drive Northwest  
Ramsey, Minnesota 55303

U.S. MAIL

William K. Goodrich  
RANDALL & GOODRICH, PLC  
2140 Fourth Avenue North  
Anoka, Minnesota 55303

U.S. MAIL AND EMAIL

Re: Bury & Carlson Lease

Gentlemen:

We represent Bury & Carlson, Inc. As you are aware, Bury & Carlson, as Tenant, and the City of Ramsey, as Landlord, entered into a Lease Agreement dated March 28, 2008 (the "Lease") regarding property described as Lot 1, Block 1, Bury & Carlson Addition, as more specifically described in the Lease. As the City is aware, the business operated by Bury & Carlson on the leased premises primarily consists of stockpiling rubble and then crushing that rubble to sell as a usable product. Operating that business requires various permits and approvals, all of which require payment of fees and the satisfaction of a variety of conditions, which Bury & Carlson has paid and satisfied, year in, year out.

It has come to our attention that on multiple occasions, other contractors have stockpiled rubble on other property in Ramsey and operated a substantially similar business enterprise, without obtaining appropriate permits and approvals and without satisfying the types of requirements and conditions that Bury & Carlson has been required to satisfy. Upon the City receiving notice of this, it is my understanding that the City has allowed it without adverse consequences to the violating contractor or the City has issued permits even though the violating contractor did not qualify to receive them. This situation and process result in those contractors receiving an inappropriate and unfair competitive advantage over Bury & Carlson and establish an unfair business climate in Ramsey.

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Bury & Carlson has no interest in being the City's watchdog for these violations, but Bury & Carlson is not going to idly stand by while other firms violate prescribed requirements without adverse consequences. Bury & Carlson is not particularly interested in engaging in legal action with the City over this but if a satisfactory resolution is not achieved, Bury & Carlson may be left with little alternative.

As you may recall, Bury & Carlson may terminate the Lease upon delivering eighteen (18) months' notice to the City. Under the circumstances, Bury & Carlson would be willing to terminate the Lease now, effective as of March 31, 2013, to avoid conflict and further issues. Our goal is not to unnecessarily escalate this into an adversarial dispute; Bury & Carlson would rather work out a mutually acceptable solution with the City, such as simply terminating the Lease now and ending the landlord/tenant relationship without prolonging the issues.

Please let me know at your earliest opportunity whether the City is receptive to the mutual termination of the Lease as of March 31, 2013.

Sincerely,



Gary A. Renneke, for  
Larkin Hoffman Daly & Lindgren Ltd.

jj

cc: John Bury

# BURY & CARLSON SITE

143RD AVE

JASPAR STREET

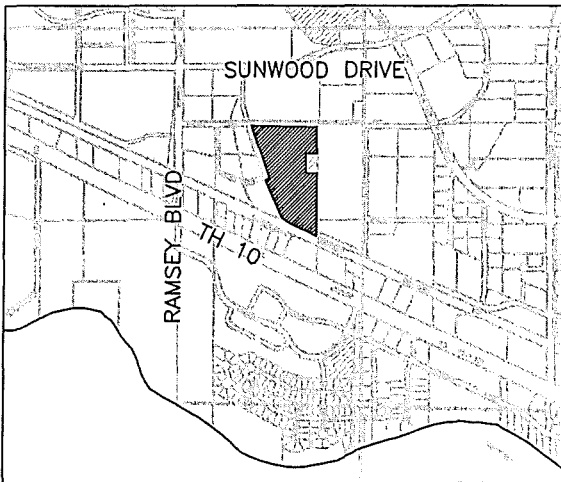
THIS AREA SHALL NOT BE  
TERMINATED.  
NEEDED FOR BURY & CARLSON  
OPERATIONS

11.13 AC

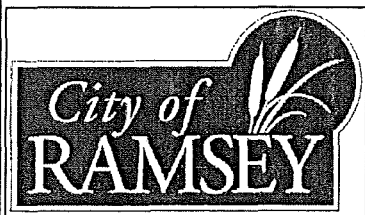
CEMETERY  
EXCEPTION

CITY TO USE THIS  
AREA AT AGREED UPON  
TIME

10.37 AC



LOCATION



## EXHIBIT A BURY & CARLSON LEASE AGREEMENT

FEBRUARY 28, 2008

**CONSIDER PURCHASE OF BURY AND CARLSON PROPERTY FOR FUTURE  
PUBLIC WORKS FACILITY**

**By: Brian E. Olson, Director of Public Works / Principal City Engineer**

**Background:**

As the Council is aware, on October 9, 2007, Staff was given authority to negotiate with Norman Bury for the purchase of the Bury and Carlson parcel of land lying east of Jasper Street and south of 143<sup>rd</sup> Avenue NW for use as a future Public Works facility. The parcel is located at 14251 Jasper Street and is approximately 21.14 acres in size. The property is occupied by an aggregate business.

On January 8, 2008, City Council met in closed session to discuss the terms of the proposed acquisition. At this meeting, the three primary concerns expressed from the City Council revolved around the leaseback provisions, environmental concerns, and the verbal lease agreements with two dumpster companies.

On February 12, 2008, City Council met in closed session to discuss the terms of the proposed acquisition. Staff explained that if the City was to require an early acquisition of the property, Mr. Bury would need an additional sum of money (\$78,000 per year for the entire property and \$58,000 per year for the remaining ~10 acres). Attached to the case is a spreadsheet representing this issue. Staff also explained that the lease would include provisions to require Bury and Carlson to perform a Phase I environmental when the City takes possession of the property to address the environmental concerns expressed. And finally, Bury and Carlson would be required to enter into a written lease with the tenants and be wholly responsible for the relocation benefits. This would be accomplished by \$125,000 of the purchase price being put into escrow by Bury and Carlson to cover these relocation benefits and Phase I clean-up costs, if any.

At the Special City Council meeting on Feb 19, 2008, a motion was made directing Staff to continue negotiating the terms for the final purchase and leaseback agreement with Bury & Carlson for the purchase of the Bury and Carlson site for a price not to exceed \$1,753,500 or approximately \$1.90/sq. ft. Staff was directed to use its best efforts to present final documents for review by the City Council at a Work Session on February 26, 2008 and to consider final approval at the regular meeting later that evening.

**Funding Source:**

|                                |                                                   |                                                      |
|--------------------------------|---------------------------------------------------|------------------------------------------------------|
| TIF #2:                        | \$1.90/s.f. x 1.63 acres x 43,560 s.f = \$134,905 | ((\$1,753,500/21.14 acres/43,560 s.f. = \$1.90/s.f.) |
| Water Enterprise:              | \$1,753,500 x 50% / 3 enterprises = \$292,250     |                                                      |
| Sewer Enterprise:              | \$1,753,500 x 50% / 3 enterprises = \$292,250     |                                                      |
| Storm Sewer Enterprise:        | \$1,753,500 x 50% / 3 enterprises = \$292,250     |                                                      |
| General fund (Parks, Streets): | \$741,845 / 2 = \$370,923 each                    |                                                      |

It is proposed that the above amounts be financed over 20 years, utilizing internal borrowing. Attached to the case is a spreadsheet indicating the impact to each of the funds that was handed out at the February 12<sup>th</sup> closed work session.

**Recommendation:**

Approve the purchase and leaseback agreements for the acquisition of the Bury and Carlson property located at 14251 Jasper Street.

**Council Action:**

Motion to approve the purchase and leaseback agreements for the acquisition of the Bury and Carlson property located at 14251 Jasper Street.

**Review Checklist:**

City Attorney  
Finance Officer  
Economic Development Coordinator  
City Administrator

A handwritten signature in black ink, appearing to be 'A. O.', is written over the list of roles. The signature is stylized and somewhat cursive.

CC: 02.26.08

Bury and Carlson Land Appreciation

|      | Land Cost   | Appreciation (3%) | Total          |
|------|-------------|-------------------|----------------|
|      | \$1,753,500 |                   |                |
| 2009 | \$1,753,500 | \$52,605          | \$1,806,105    |
| 2010 | \$1,806,105 | \$54,183          | \$1,860,288    |
| 2011 | \$1,860,288 | \$55,809          | \$1,916,097    |
| 2012 | \$1,916,097 | \$57,483          | \$1,973,580    |
| 2013 | \$1,973,580 | \$59,207          | \$2,032,787    |
| 2014 | \$2,032,787 | \$60,984          | \$2,093,771    |
| 2015 | \$2,093,771 | \$62,813          | \$2,156,584    |
| 2016 | \$2,156,584 | \$64,698          | \$2,221,281    |
| 2017 | \$2,221,281 | \$66,638          | \$2,287,920    |
| 2018 | \$2,287,920 | \$68,638          | \$2,356,557    |
| 2019 | \$2,356,557 | \$70,697          | \$2,427,254 ** |

\*\* Purchase price in 2019 does not include additional relocation, condemnation costs, or improvement costs (ie. Buildings, site improvements)

Bury Carlson Land Purchase

|                                        |           | If City were to acquire<br>property beginning<br>1-Jan-09<br>Buy Back | If City were to acquire<br>property beginning<br>1-Jan-11<br>Buy Back | No Early<br>Prop Acq<br>Retain Land<br>4/1/2018 |
|----------------------------------------|-----------|-----------------------------------------------------------------------|-----------------------------------------------------------------------|-------------------------------------------------|
|                                        | Land Cost | \$ 1,753,500                                                          | \$ 1,753,500                                                          | \$ 1,753,500                                    |
| 10 acres acquired                      | 1/1/2009  | \$ 78,000                                                             | \$ -                                                                  |                                                 |
| 10 acres acquired                      | 1/1/2010  | \$ 78,000                                                             | \$ -                                                                  |                                                 |
| 10 acres acquired                      | 1/1/2011  | \$ 58,000                                                             | \$ 58,000                                                             |                                                 |
| 10 acres acquired                      | 1/1/2012  | \$ 58,000                                                             | \$ 58,000                                                             |                                                 |
| 10 acres acquired                      | 1/1/2013  | \$ 58,000                                                             | \$ 58,000                                                             |                                                 |
| 10 acres acquired                      | 1/1/2014  | \$ 58,000                                                             | \$ 58,000                                                             |                                                 |
| 10 acres acquired                      | 1/1/2015  | \$ 58,000                                                             | \$ 58,000                                                             |                                                 |
| 10 acres acquired                      | 1/1/2016  | \$ 58,000                                                             | \$ 58,000                                                             |                                                 |
| 10 acres acquired                      | 1/1/2017  | \$ 58,000                                                             | \$ 58,000                                                             |                                                 |
| 10 acres acquired                      | 4/1/2018  | \$ 58,000                                                             | \$ 58,000                                                             |                                                 |
| Liability Ins                          |           |                                                                       |                                                                       |                                                 |
| Property Tax Lost(City Portion at .40) |           | \$ 181,122                                                            | \$ 151,602                                                            | \$ -                                            |
| Lost Interest                          |           | \$ 1,210,147                                                          | \$ 1,125,254                                                          | \$ 1,007,320                                    |
| Total Costs                            |           | <u>\$ 3,764,769</u>                                                   | <u>\$ 3,494,356</u>                                                   | <u>\$ 2,760,820</u>                             |

|                |               | property beginning<br>1-Jan-09<br>Buy Back | property beginning<br>1-Jan-11<br>Buy Back | Prop Acq<br>Retain Land<br>4/1/2018 |
|----------------|---------------|--------------------------------------------|--------------------------------------------|-------------------------------------|
|                | Interest Rate |                                            |                                            |                                     |
| 1/1/2009       | 4.00%         | \$ 73,260                                  | \$ 70,140                                  | \$ 70,140                           |
| 1/1/2010       | 4.05%         | \$ 80,302                                  | \$ 73,857                                  | \$ 73,857                           |
| 1/1/2011       | 4.10%         | \$ 86,964                                  | \$ 80,175                                  | \$ 77,797                           |
| 1/1/2012       | 4.30%         | \$ 97,439                                  | \$ 90,028                                  | \$ 84,938                           |
| 1/1/2013       | 4.50%         | \$ 108,966                                 | \$ 100,877                                 | \$ 92,710                           |
| 1/1/2014       | 4.70%         | \$ 121,656                                 | \$ 112,827                                 | \$ 101,188                          |
| 1/1/2015       | 4.90%         | \$ 135,636                                 | \$ 125,999                                 | \$ 110,452                          |
| 1/1/2016       | 5.10%         | \$ 151,048                                 | \$ 140,526                                 | \$ 120,594                          |
| 1/1/2017       | 5.30%         | \$ 168,051                                 | \$ 156,558                                 | \$ 131,714                          |
| 4/1/2018       | 5.50%         | \$ 186,825                                 | \$ 174,267                                 | \$ 143,929                          |
| Total Interest |               | <u>\$ 1,210,147</u>                        | <u>\$ 1,125,254</u>                        | <u>\$ 1,007,320</u>                 |

Compounded interest and based on treasury 2-20-08 plus two basis points

for Tenant to conduct its business. Further, the Terminated Area shall not include the area of the Leased Premises designated or depicted on Exhibit A attached hereto and made a part hereof. Landlord shall deliver to Tenant not less than 120 days prior written notice of any such partial termination. To be effective, any such notice must include a depiction of the proposed Terminated Area, including reasonably identifiable dimensions of the same. From and after the Effective Date of such partial termination, the Leased Premises shall be deemed to be all of the Leased Premises other than the Terminated Area. Any other terms or provisions herein to the contrary notwithstanding, irrespective of the location and area of the Terminated Area, Tenant shall continue to have the right to use (i) the most southerly curb cut on Jasper Street located northerly of 142nd Avenue Northwest, and (ii) the driveway extending from that curb cut into the Leased Premises (and, if applicable, the Terminated Area) as necessary or desirable to have access to and from the large scale on the Leased Premises and for any other applicable purposes.

**2.5. Holding Over.** If Tenant does not vacate the Leased Premises at the end of the lease term, or upon other termination of Tenant’s right of possession, then Tenant’s further possession shall be wrongful and Tenant shall be subject to eviction at any time, pursuant to law and Landlord’s proven direct damages. In no event shall holding over by Tenant imply any extensions of this Lease.

**3. RENT/DEPOSITS**

**3.1 Base Rent.** The Tenant shall pay as “Base Rent” for the Leased Premises, an amount equal to the following: NONE.

**3.2 Security Deposit.** Intentionally deleted.

**3.3 Additional Rent.** Tenant shall pay as additional rent, when billed by Landlord the annual property taxes levied against the Leased Premises, however, Tenant’s obligation for said property taxes shall not exceed those amounts specified below:

|                          |                                  |             |
|--------------------------|----------------------------------|-------------|
| 04/01/2008 to 03/31/2009 | Property Taxes shall not exceed: | \$36,000.00 |
| 04/01/2009 to 03/31/2010 | Property Taxes shall not exceed: | \$37,800.00 |
| 04/01/2010 to 03/31/2011 | Property Taxes shall not exceed: | \$39,690.00 |
| 04/01/2011 to 03/31/2012 | Property Taxes shall not exceed: | \$41,674.50 |
| 04/01/2012 to 03/31/2013 | Property Taxes shall not exceed: | \$43,758.23 |
| 04/01/2013 to 03/31/2014 | Property Taxes shall not exceed: | \$45,946.14 |
| 04/01/2014 to 03/31/2015 | Property Taxes shall not exceed: | \$48,243.35 |
| 04/01/2015 to 03/31/2016 | Property Taxes shall not exceed: | \$50,655.62 |
| 04/01/2016 to 03/31/2017 | Property Taxes shall not exceed: | \$53,188.40 |
| 04/01/2017 to 03/31/2018 | Property Taxes shall not exceed: | \$55,847.82 |

**3.4** The additional rent shall be reduced by fifty percent (50%) in the event Landlord elects to reduce the Leased Premises area as described in paragraph 2.4 above.

**3.5 Operating Expenses.** Except as set forth above in Sections 3.3 and 3.4, Tenant shall not be obligated to pay to Landlord any operating expenses, additional rent or other rent. Real estate taxes for any calendar year shall be deemed to be the taxes payable in the respective