

# MOU/Settlement Term Sheet (May 11, 2023)

## Recitals

- A. The City of Minneapolis (*City*) currently owns the Minneapolis property depicted at right,<sup>1</sup> comprised of the:
- Hiawatha Maintenance Facility (*HMF*) (shaded in blue, 1911 E 26<sup>th</sup> St);
  - Roof Depot Facility (in yellow, 1860 E 28<sup>th</sup> St); and
  - Community Development site (in pink, 2717 Longfellow Ave).



- B. This property is in the East Phillips neighborhood, a neighborhood with some of the worst air pollution and environmental indicators in the City and State, emitting from numerous sources. As a result, residents of the neighborhood suffer from elevated levels of pollution-related and sometimes life-threatening illnesses, including asthma, COPD, heart conditions, stroke, etc. To allow these conditions to remain or to be exacerbated is inconsistent with the City's values.

- C. After a process of engaging community members, the East Phillips Neighborhood Institute (*EPNI*) put forth plans to use the area comprised of the pink and yellow shading (*Roof Depot Site*) for a multi-use, community investment space that has been colloquially called the Indoor Urban Farm (*Project*). This Project would address public health needs and build community resilience through production of food/food security, jobs and job training, economic opportunities, solar energy production, affordable housing and more.

East Phillips Indoor Urban Farm Project - Aerial View



Courtesy DJR Architecture and Design

- D. However, the City also put forth plans for the (pink plus yellow shaded) Roof Depot Site, namely an expansion of the HMF. This would increase traffic and pollution in the neighborhood.
- E. For about ten years, the City and EPNI have been in conflict over the use of the Roof Depot Site.
- F. The City's mission statement provides: *Our City government takes strategic action to address climate change, dismantle institutional injustice and close disparities in health, housing, public safety and economic opportunities. In partnership with residents, City leaders help to ensure all communities thrive in a safe and healthy city.*

<sup>1</sup> The above graphic representing the Roof Depot Site and its acreage was pulled from the City's previous MOU and, so far as there are any inaccuracies in dimensions, is only used for purposes of reference in this MOU.

- G. This mission statement is consistent with numerous other commitments the City has been making to address disparities (e.g., Green Zones commitment, addressing racism as a public health emergency) as well as to do so in a process that engages neighborhoods, identifying and addressing their specific needs (e.g., inform, consult, involve, collaborate, and empower per the City's Racial Equity Impact Analysis).
- H. While the City's plans for the Roof Depot Site started long before its above-named commitments to close disparities and promote racial equity and community empowerment, the City wishes to embrace those commitments going forward. The City wishes to support EPNI's vision as part of those commitments.
- I. As such, the City and EPNI desire to enter into an agreement by which the City will sell to EPNI or its designee (*EPNI/Designee*) the Roof Depot Site. The City and EPNI also desire to enter into an agreement by which the City will agree to grant EPNI/Designee the right of first refusal of purchase of the existing HMF, if the 8 acres should be sold in the next 50 years.
- J. The price for the sale has not yet been determined.

#### **Agreement**

- I. Relating to securing funding for EPNI/Designee to purchase and redevelop the Roof Depot Site, the City will:
  - a. Immediately, proactively, and publicly support EPNI/Designee in securing State funding allocations of at least \$20 million to EPNI/Designee to support the Indoor Urban Farm Project<sup>2</sup>, including, but not limited to:
    - i. Proactively lobbying at the state legislature.
    - ii. Participating in any meetings that state legislators or EPNI convenes.
  - b. Immediately, proactively, and publicly support EPNI/Designee in securing other funding for the project, including, but not limited to:
    - i. Providing a written guarantee/assurance that EPNI/Designee will have site control.
    - ii. Signing letters of intent in support of the project, specifying a willingness to contribute to and/or finance the development of the site (including public and private).
    - iii. Supporting EPNI/Designee's work to acquire low-interest loans.
    - iv. Negotiating a favorable period of time within which EPNI/Designee may fundraise should adequate funding from the State Legislature not materialize.
- II. Furthermore, the City agrees to contractually:

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<sup>2</sup> Currently, HF 2093 and SG 1853.



- a. Sell the Roof Depot Site according to the governing rules of Minnesota Statutes Chapter 500, whereby public property can be sold at the fair market value of the property as determined by the Board of Estimation and Taxation and a third-party appraiser according to the Minneapolis Charter, Article 9.
- b. Allocate state bonds received by the state to complete any environmental remediation at the Roof Depot Site recommended by the Minnesota Pollution Control Agency.
- c. Upon the sale of the Roof Depot Site, negotiate and settle any and all pending legal cases EPNI has brought against it and compensate all impacted parties for the legal fees incurred.
- d. Waive its right to acquire the Roof Depot Site by eminent domain for at least 50 years.

III. Regarding disclosure of the Roof Depot Site to EPNI/Designee, the City agrees to:

- a. Immediately give representatives of EPNI/Designee access to the building to complete measurements, inspect it for visible signs of wear, tear, and disrepair, and more.
- b. Within two weeks of signing this MOU, provide EPNI/Designee with:
  - i. The inspection report submitted by the previous owner of the Roof Depot Site.
  - ii. The results of every test and report (including by Braun Intertec and other contractors or agents) that have been done on the property since the City acquired the property, and any reports predating the purchase of the property by the City that are in the City's possession or control that have not been previously produced to EPNI in litigation.
  - iii. A copy of every contract that the City has entered into regarding the Roof Depot Site, including that with Braun Intertec, Rachel Contracting, and related to any building maintenance.
  - iv. Public disclosures of all capital improvements made to the Roof Depot Site since the purchase date, included but not limited to environmental remediation, arsenic decontamination or any renovations performed to building.
  - v. A commercial real estate appraisal provided by a privately-owned third-party appraiser.
  - vi. A general ledger documenting all expenses associated with any work (whether related to maintenance, pre-demolition, or other) that has been done on the building since the City acquired the Roof Depot Site.

IV. Starting the date that the EPNI/Designee has site control of the Roof Depot Site:

- a. EPNI/Designee will have twelve months to complete its "due diligence" closing items (e.g., construction plans, financing commitments, zoning approvals, insurance, payment and performance bonds, affirmative action and SUBP approvals, prevailing wage documentation, building permits, authorizing resolutions, etc.)

- b. The City will fully cooperate in providing EPNI/Designee with all documents and access necessary for EPNI/Designee to perform its due diligence.
  - c. When EPNI/Designee has completed its due diligence, there will be an additional 60-day closing period, during which time the two Parties will work together to ensure that all closing terms are met, to the extent that either Party is responsible for fulfilling a closing term as a condition precedent to the other Party's fulfillment of a closing term.
- V. All city staff will fully cooperate with EPNI/Designee in any way related to the processes outlined in this MOU, as well as any other processes that may arise during the pendency of these transactions.
- VI. Per state law and City policies, sales of City property are subject to prior review by the City Planning Commission for a determination of consistency with the City's comprehensive plan. Sale of City property is also subject to a public hearing duly noticed in a newspaper of general circulation and a 2/3 affirmative vote of the City Council.
- VII. The City agrees to work with counsel for the persons charged with crimes for their protest on the Roof Depot Site on February 21, 2023, to dismiss charges, as any activity was protected by the First Amendment of the United States Constitution. This term does not reflect any admission or assumption of an attorney-client relationship with the persons charged nor EPNI's affiliation with the persons charged.
- VIII. Council and Mayor Approval. The parties acknowledge that this document must be approved by the Minneapolis City Council and the Mayor of Minneapolis before it can become final and binding.
- IX. Regarding litigation between EPNI and the City:
  - a. As soon as this MOU is adopted, the City will work with, coordinate with, and not oppose, EPNI's representatives in securing a stay of any pending litigation between the parties.
  - b. The City agrees and acknowledges that it will not move to dismiss these stayed actions until after the sale of the property to EPNI/Designee has been accomplished and the City has complied with the provisions of this MOU or any future obligations that it may assume in furtherance of this transaction. At such time or time deemed appropriate by the parties, EPNI will join City in any motion or stipulation to dismiss.
  - c. Alternatively, the City agrees to engage in good faith negotiations to settle the litigation pursuant to the terms of this MOU, which would be reduced to writing and filed with the court as an enforcement consent judgment.