

Fergus Falls

Port Authority

112 West Washington, Fergus Falls, MN 56537
Phone: (218) 332-5459 FAX: (218) 332-5449

MEMORANDUM

TO: Port Authority Commissioners
Rolf Nycklemoe
Bill Sonmor
Mayor Ben Schierer
News Media

FROM: Klara Beck

DATE: September 12, 2024

A Port Authority meeting will be held on **Monday, September 16, 2024** in the Council Chambers of City Hall following the City Council meeting

The Agenda is as follows:

- 1) Approval of Meeting Minutes from September 3, 2024 Port Authority meetings
- 2) Action Items
 - a) RFQ for Snow Removal & Lawn Services at CBHH (1801 Alcott Ave W)
 - b) Right of First Refusal -SCR Solutions
- 3) Old Business
- 4) Adjourn

For accommodations if you have special needs, please call 332-5400 or 1-800-627-3529, TTY, Voice, ASCII (Minnesota Relay Service)

Port Authority
September 3, 2024

The Fergus Falls Port Authority held a meeting on September 3, 2024, in the City Council Chambers. Port Authority President Scott Rachels called the meeting to order at 6:14 pm and the following members were in attendance: Kremeier, Rachels, Hicks, Job, Kvamme and Rufer. Fish was absent.

Minutes

A motion and second were made by Job and Rufer to approve the minutes from the August 19, 2024 meeting and the motion carried.

2025 Port Authority Budget

The 2025 preliminary Port Authority budget was presented on August 19th and proposed levying a tax of \$120,000 for 2025. The city's Tax Levy Committee has reviewed the budget and recommended a levy of \$67,000 as they have eliminated a \$48,000 funding request from Greater Fergus Falls and reallocated some staff time to the planning department. The recommendation would decrease the 2025 budget from \$372,090 to \$319,090. A motion and second were made by Hicks and Kremeier approving the 2025 proposed Port Authority budget of \$319,090 and the motion carried.

The meeting adjourned at 6:20 pm

Lynne Olson

**FERGUS FALLS PORT AUTHORITY
REQUEST FOR QUOTES**

The Fergus Falls Port Authority (Port Authority) is the owner of a treatment facility located at 1801 Alcott Avenue West, Fergus Falls, Minnesota and as such has the responsibility to provide Lawn Maintenance and Snow & Ice Removal Services to the tenant of the facility. The Fergus Falls Port Authority is requesting quotes for Lawn Maintenance and Snow & Ice Removal Services for this facility for the period of November 1, 2024 to November 1, 2026.

Quotes will be accepted until 4:00 p.m. on Tuesday, September 10, 2024 by mail or deposited in the drop box at City Hall, located at 112 West Washington Avenue, Fergus Falls, MN 56537. Please complete the form below and place in a sealed envelope plainly marked **“Quote for Contracted Lawn Maintenance and Snow & Ice Removal Services at the CBHH”**.

Attached is a draft of the Memorandum of Understanding Agreement including the provisions and the scope of work. Please furnish your information below and return.

Name _____

Business _____

Address _____

Phone number(s) _____

Email _____

Monthly amount will include labor, equipment, materials, and any sub-contracts you might need to hire for special treatments.

Price per month for Lawn Maintenance and Snow & Ice Removal Services as described in MOU for the CBHH Facility.

\$ _____

If you have any questions please contact Jill Hanson, at (218) 332-5459 or jill.hanson@fergusfallsmn.gov

Thank You,

Jill M. Hanson
Fergus Falls Port Authority Office Manager

Memorandum of Understanding

WHEREAS, the Fergus Falls Port Authority (Port Authority) is the owner of a treatment facility located at 1801 Alcott Avenue West, Fergus Falls, Minnesota and as such has the responsibility to provide lawn maintenance and snow and ice removal to the tenant of the facility; and

WHEREAS, the Port Authority, after receiving a number of cost estimates, has selected _____ to provide lawn maintenance and snow and ice removal services for this facility.

NOW THEREFORE, the Port Authority and _____ do hereby agree as follows:

1. _____ will be paid, as an Independent Contractor, \$_____ per month to provide lawn maintenance and snow and ice removal at the treatment facility located at 1801 Alcott Avenue West.
2. It is understood by the Port Authority and _____ that there are no restrictions on minimum hours or maximum hours necessary to carry out the services outlined below.
3. _____ will provide the following lawn care services:
 - All mowing of premises and bagging where needed.
 - Trimming around all curbs, shrubs and electrical poles and boxes.
 - Blowing off all sidewalks and drives when mowing is complete.
 - Spraying of fertilizer and weed killer two times per season, in the spring and early summer.
 - Lawn Pest Control
4. _____ will provide the following snow removal services:
 - Keep parking lot clear of all snow seven (7) days per week and pile snow on agreed upon location at the site
 - Parking lot should be cleared by 6:00 am after an out night snow fall
 - Keep sidewalks clear of snow on all sides of building and shovel pad in back patio
 - Put salt & sand on walks for ice and leave some on site for staff to use on sidewalks as needed
5. In addition _____ will provide these services:
 - Keep all trees and shrubs trimmed.
 - Keep all trash picked up around premises.
 - Keep all weeds out of driveway, walks, and landscaped area.
6. _____ is required to provide the Port Authority with proof of liability insurance at a minimum level of \$1,000,000 per occurrence and \$2,000,000 aggregate. The Port Authority will be named as Additional Insured on the insurance policy. In addition, if

_____ has employees he is required to provide the Port Authority with proof of workers' compensation insurance coverage for those employees.

7. _____ guarantees that there will be no increase in his charges for the above described services for a period of two years from the commencement of this agreement, on November 1, 2024 to November 1, 2026.
8. Monthly payments will commence in November, 2024, with payments to be received on or about the 20th of each month.
9. Either party has the option to cancel these arrangements by the giving of a 15 day written notice. The monthly payment due under these circumstances would be prorated.

This Memorandum of Understanding is dated this _____ day of _____, 2024.

FERGUS FALLS PORT AUTHORITY

XXXXXXXX

Name of Lawn & Snow Removal Co.

Signature

RIGHT OF FIRST OPTION TO PURCHASE AGREEMENT

This Right of First Option to Purchase Agreement (the “**Agreement**”), made effective this ____ day of _____, 2024, by and between the **FERGUS FALLS PORT AUTHORITY, a corporate body politic of the State of Minnesota** (hereinafter referred to as “**Grantor**”), and **SCR SOLUTIONS, INC. a Minnesota corporation** (hereinafter referred to as “**Grantee**”). Grantor and Grantee are referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Grantor is the owner of Property described in Exhibit A (the “**Property**”).

WHEREAS, Grantor wishes to restrict the Property and grant to the Grantee a right of first option to purchase the Property under the terms herein.

NOW THEREFORE, in consideration of the sum of _____ DOLLARS (\$____.00) and other good and valuable consideration, Grantor and Grantee hereby covenant and agree as follows:

1. **Grant of First Option Right.** Grantor grants to Grantee, a right of first option (the “First Option Right”) to purchase all of Grantor's right, title, and interest in and to the Property.

2. **Attachment and Recording.** This Agreement attaches to the Property and is binding on Grantors successors and assigns until terminated under the terms herein. This Agreement shall be recorded at Grantee’s expense in the Otter Tail County Recorder’s Office, Otter Tail County, Minnesota.

3. **Terms of First Option Right to Purchase:**

3.1. **Notice of Intent to Sell, Grantee Option to Purchase.** If the Grantor intends to sell the Property, prior to listing or selling the Property to any third-party, the Grantor shall notify the Grantee of the Grantor’s intent to sell the Property sent by certified mail to the Grantee’s most recent address along with the most recent county tax statement from the county in the year of such notice being provided. After proper notice has been provided and the Grantee has not

exercised its First Option Right, the Property may be sold to a third-party which sale **SHALL BE OR SHALL NOT BE SUBJECT TO SECTION 3.3 BELOW**.

3.2 **Notice of Intent to Sell, Grantee Exercise its First Option Right.** If the Grantee wishes to exercise its First Option Right following receipt of Grantor's notice of intent to sell, the Grantee shall provide and deliver its written notice to elect to exercise its First Option Right to Grantor within thirty (30) days of receipt of Grantor's notice of intent to sell. The purchase price shall be based on an appraised value, as determined by a neutral third-party appraiser. The costs of obtaining such a valuation shall be split equally between the buying and selling Parties. If the Parties are not able to choose a neutral third-party appraiser, each Party shall choose their own appraiser to provide an appraisal, and each Parties appraiser shall then choose a third-party neutral appraiser who shall review each appraisal and determine which appraisal is most appropriate and represents the closest appraisal representing the fair market value of the Property which shall then determine the purchase price. In either case, the Parties must within thirty (30) days thereafter enter into a purchase agreement with typical seller and buyer terms which must include that closing shall occur no later than sixty (60) days after the purchase agreement is entered into. If the Parties are not able to enter into a purchase agreement within this thirty (30) day period, or if the purchase agreement does not close within the sixty (60) day period, Grantee's First Option Right shall terminate, and the Property may be sold to a third party which sale **SHALL BE OR SHALL NOT BE SUBJECT TO SECTION 3.3 BELOW**

3.3 **Bona Fide Offer, Grantee Election to Purchase.** In the event Grantor receives a bona fide written offer from any third party to purchase the Property which Grantor desires to accept, Grantee may elect to purchase the Property at the price and on the terms and conditions (except for the time within which to close the transaction) as are contained in the written offer. Grantor shall give notice to Grantee, including delivery to Grantee of a true and exact copy of the written offer, and Grantee shall have ten (10) calendar days subsequent to Grantee's receipt of such notice within which to elect to purchase the Property from Grantor. If Grantee elects to purchase the Property, Grantee shall provide and give written notice of such election to Grantor within the ten (10) day period. Grantor shall then sell the Property to Grantee at the price and on the same terms and conditions as are contained in the written offer, except that Grantee shall not be required to close the transaction prior to thirty (30) calendar days following the expiration of the aforesaid 10-day period. Closing shall occur within sixty (60) days of the notice of election by Grantee.

3.4 **Termination of First Refusal Right, Rights Retained.** If Grantee does not elect to exercise the right to purchase, or should Grantee fail to notify Grantor of its election to purchase within the time periods described in Section 3.1 (30 days) or 3.2 (10 days), or the Parties do not enter into a purchase agreement within the time period described in Section 3.1 (30 days), or the Parties fail to close within the time period described in Section 3.1 (60 days), then Grantor may sell the Property to the third party submitting the written offer, provided said sale closes on the same material terms and conditions as contained in the written offer provided to Grantee, without any substantive modification thereto, except the closing may be extended for up to an additional 120 days as set forth in the original first written offer. Should any such sale

be successfully closed, this First Refusal Right will terminate and be of no further force and effect with respect to the Property. Should any sale not be successfully closed as provided herein, this agreement shall not terminate, and should Grantor subsequently receive any modified or new bona fide written offer from any third party to purchase the Property, Grantor shall again follow the provisions of this Agreement requiring notice to Grantee and opportunity for Grantee to purchase the Property.

4. **Right of First Refusal Agreement to Become Contract for Purchase.** If Grantee elects to exercise its right to purchase the Property, this Agreement shall incorporate the terms of the written offer which were accepted in the exercise of the first right of refusal and together the written offer and this Agreement shall become a contract of purchase and sale subject to the terms contained in this Agreement.

5. **Closing.** The closing (the "Closing") of the exercise of the First Refusal Right shall be held as provided in Section 3 of this Agreement. The exact time, date, and location of Closing shall be selected by Grantee by delivering written notice thereof to Grantor at least ten (10) business days prior to Closing. Closing shall occur within the City of Fergus Falls, Minnesota. In the event Grantee has exercised the First Refusal Right but does not notify Grantor of the exact time and date of Closing, Closing shall be held at 10:00 a.m. on the last day for closing as described in said Paragraph 3 at the Property.

6. **Inspection of Property.** For a period of 10 days following Grantee's notice of election, Grantee and Grantee's agents, employees and independent contractors shall have the right and privilege to enter upon the Property to survey and inspect the Property, all at Grantee's sole cost and expense. Grantee must provide Grantor reasonable prior notice of any inspection or survey.

7. **Notices and Communications, Addresses.** Written notices or other communication required or permitted herein shall be delivered by hand (or by professional overnight courier service) or by certified United States mail, return receipt requested, postage and charges prepaid, to the following addresses:

To Grantor: Fergus Falls Port Authority
Attn. Executive Director
112 West Washington Ave
Fergus Falls, MN 56537

To Grantee: SCR Solutions
Attn. Mark Sikkink
1007 N Tower Rd
Fergus Falls, MN 56537

Any notice, election, exercise of the First Refusal Right, or other communication delivered or mailed as aforesaid shall be effective upon receipt or refusal to accept delivery. The parties may

change their address for notice and communications from time to time by notifying the other party of the new address in the manner provided for giving notice herein.

8. **Time is of the Essence.** Time is of the essence for this Agreement.

9. **Enforceability.** This Agreement is the entire agreement of the parties and may be amended only by written agreement executed by the parties. If any portion of this Agreement is declared invalid or unenforceable under applicable law, then the performance of such portion shall be excused to the extent of such invalidity or unenforceability, but the remainder of this Agreement shall remain in full force and effect.

10. **Agreement Construed under Laws of Minnesota.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota.

11. **Grantee Rights Assignable with Consent.** Grantee may assign its rights in this Agreement only with the prior written consent of Grantor, which may or may not be given in Grantor's sole discretion.

12. **Termination.** This Agreement shall terminate on December 31, 2029.

13. **Agreement Binding on Heirs, Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Grantor and the Grantee and their respective heirs, successors, executors, administrators, and assigns, if any.

14. **Grantee Failure to Perform.** In the event the First Refusal Right is terminated or if the First Refusal Right is exercised and does not close due to the default of Grantee, Grantee's First Refusal Rights shall terminate and the rights and interests in and to the Property shall automatically be rendered void without action by Grantor or Grantee. In furtherance of the foregoing, Grantee shall, upon the request of Grantor, execute and deliver to Grantor a quitclaim deed releasing the Property from any right or claim of Grantee, and Grantee hereby appoints Grantor Grantee's attorney-in-fact for the sole purpose of executing and delivering on behalf of Grantee a quitclaim deed as aforesaid. Notwithstanding the above, Grantor will not exercise the power of attorney herein granted until five (5) days after Grantor has given to Grantee written notice of Grantor's intention to exercise the power of attorney and Grantee has failed to execute and deliver a quitclaim deed as aforesaid within said five-day period. All third parties may rely, without further documentation, upon Grantor's filing of a document evidencing termination of the First Refusal Right signed solely by Grantor.

EXECUTED as of this ____ day of _____, 2024.

GRANTOR:
FERGUS FALLS PORT AUTHORITY

By: _____
Klara beck, Executive Director

THIS INSTRUMENT DRAFTED BY:



Rolf Nycklemoe

Nycklemoe & Ellig, P.A.

106 East Washington Avenue

Fergus Falls, MN, 56537

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Email: rolf@nycklemoelaw.com 106 East Washington Ave

Fergus Falls, MN 56537

EXHIBIT A

Real Property in Otter Tail County, Minnesota described as follows:

Parcel 71003500011005

Tract B: Commencing at the north quarter corner of Section 33, Township 133 North, Range 43 West; thence on an assumed bearing, based on the survey done by the city engineer for the city of Fergus Falls, of South 00 degrees 44 minutes 36 seconds West 300.03 feet to the point of beginning of the land to be described; thence North 89 degrees 59 minutes 01 seconds East 120.01 feet; thence North 00 degrees 44 minutes 36 seconds East 300.03 feet to the north line of said Section 33; thence North 00 degrees 51 minutes 17 seconds East 455.04 feet; thence North 89 degrees 59 minutes 19 seconds East 779.99 feet; thence South 28 degrees 08 minutes 03 seconds East 515.79 feet to the north line of said Section 33; thence North 89 degrees 59 minutes 01 seconds East 205.14 feet; thence South 01 degrees 08 minutes 08 seconds West 330.19 feet to the north line of the "Tower Road Industrial Park Second Addition;" thence South 89 degrees 59 minutes 19 seconds West 1352.88 feet; thence North 00 degrees 44 minutes 36 seconds East 30.00 feet to the point of beginning.