

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: October 2, 2024

A Port Authority meeting will be held on **Monday, October 7, 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 16, 2024 Port Authority meeting
- 2) Old Business
 - a) Right of First Refusal -SCR Solutions
- 3) Adjourn to a closed session as permitted by Minn. Stat. § 13D.05, subd. 3, to consider the potential sale of a portion of Port Authority parcel #71003500176010.

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 16, 2024

The Fergus Falls Port Authority held a meeting on September 16, 2024, in the City Council Chambers. Port Authority President Scott Rachels called the meeting to order at 6:26 pm and the following members were in attendance: Rachels, Hicks, Fish, Job, Kvamme, Rufer and Kremerier.

Minutes

A motion and second were made by Fish and Job approving the minutes from the September 3, 2024, meeting and the motion carried.

Snow and Lawn Services RFQ

The Port Authority received two responses to the snow and lawn services RFQ for the CBHH facility that is owned by the city and rented by the State of Minnesota. The state, as the entity that pays these bills, reviewed the quotes and recommended entering a memorandum of understanding with Vision Concepts LLC at the price of \$2,750 per month. A motion and second were made by Rufer and Kvamme to approve the snow and lawn services proposal from Vision Concepts LLC for the CBHH facility and the motion carried.

First Right of Refusal

Marc Sikkink, the owner of SCR Solutions, requested the first right of refusal on the Port Authority owned land behind his business on Tower Road. The land has a DNR perpetual easement the city is trying to have removed. If it is removed, the City Attorney has drafted a right of first option purchase agreement. Nycklemoe explained if the easement is removed and the Port intends to sell the property, each party will secure a separate appraiser to conduct the appraisal and a third-party appraiser would review the two proposals and decide which one would be used to set the price. Nycklemoe asked the Port to weigh in on some of the outstanding issues in the agreement:

Section 3.1 Notice of Intent to Sell, Grantee Option to Purchase

If the Port intends to sell the property, prior to listing or selling the property to any third party, the Port will have to notify SCR of their intent to sell the property. If after property notice SCR Solutions has not exercised its first right option the property may be sold to a third-party which sale *shall or shall not* be subject to Section 3.3.

The Port Authority members agreed the grantee (SCR Solutions) *shall* be allowed the opportunity to match the offer.

Section 3.2 Notice of Intent to Sell, Guarantee Exercise is First Option Right

If the SCR Solutions wishes to exercise its first option right following the receipt of the Port's notice of intent to sell, they shall provide and deliver its written notice to elect to exercise its first option right within 30 days of the receipt of the notice to sell. If the parties are not able to enter into a purchase agreement within 30 days, or if the purchase agreement does not close within a 60-day period, SCR's first option right shall terminate, and the property may be sold to a third party which sale *shall or shall not* be subject to Section 3.3.

The Port Authority members agreed they *shall not* give them a second opportunity.

11. Grantee Rights Assignable with Consent

SCR Solutions may assign its rights in this agreement only with the prior written consent of the Port which *may or may not* be given in the Port's sole discretion.

The Port Authority members agreed rights *may not* be assigned.

12. Termination

This agreement shall terminate on December 31, 2029.

The Port Authority members *agreed* on the five-year termination.

The City Attorney will make the suggested amendments to the agreement, and action would be taken at a future Port Authority meeting.

The meeting adjourned at 6:32 pm.

Lynne Olson

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 ONE DOLLAR (\$1.00) 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 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 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

GRANTEE:
SCR SOLUTIONS, INC

By: Marc Sikkink
Marc Sikkink, President

STATE OF MINNESOTA)
) ss.
COUNTY OF OTTER TAIL)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024 by Klara Beck, the Executive Director of the **FERGUS FALLS PORT AUTHORITY, a corporate body politic of the State of Minnesota, Grantor.**

NOTARY PUBLIC

STATE OF MINNESOTA)
) ss.
COUNTY OF OTTER TAIL)

The foregoing instrument was acknowledged before me this 2 day of October, 2024 by Marc Sikkink the President of **SCR SOLUTIONS, INC. a Minnesota corporation, Grantee.**



Lynette Marie Gaustad
NOTARY PUBLIC

THIS INSTRUMENT DRAFTED BY:



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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.