



REQUEST FOR RAMSEY COUNTY BOARD ACTION

10.5

Type of Agenda: [] Policy [] Consent [] Public Hearing
[X] Administrative [] Information [] Ordinance

Requesting Department: Public Works

Committee: _____
Committee: _____

Meeting Date: _____
Meeting Date: _____

County-Wide Ramifications [X]
or
Affected Commissioner District(s) #: _____

Board Meeting Date: 5/8/2012
Board Meeting Date: _____

SUBJECT: Negotiated Settlement – Parcel #3 on the Rice Street at Maryland Reconstruction Project

EXECUTIVE SUMMARY

The Ramsey County Public Works Department, in cooperation with the City of St. Paul, is reconstructing Maryland Avenue at Rice Street this summer (2012). As part of the project, permanent highway and temporary construction easements were acquired over a portion of 1200 Rice Street (referred to as Parcel 3 herein), located in the southeast quadrant of the intersection of Maryland and Rice. The easements were necessary to accommodate road widening, sidewalks, and drainage structures. The City of St. Paul acquired the right of way for the project, in accordance with agreement PW2010-19, with 100% of the costs borne by Ramsey County per the Cost Participation Policy for Federal Aid projects. Ramsey County has received all acquired property from the City.

(The Executive Summary is continued on the following page.)

ACTION REQUESTED

- 1. Approve the Stipulation for Settlement for Parcel 3 with Bilal Alsadi and Iman Akli, husband and wife, in the amount of \$1,000,000, which settles all claims and costs related to this parcel (including real estate taken, severance damages, attorney's fees, expert witness fees, interest, relocation and reestablishment costs, and all other fees and costs) provides for the Owner to disclose attorney fees after payment, requires the Owner to reimburse Ramsey County construction costs related to providing water service and storm stub, both to the R/W line, for use by the Owner, and prohibits the Owner from excavating the Maryland Avenue pavement surface for utility purposes.
2. Authorize the County Manager to make budget adjustments increasing estimated revenue and appropriations to fund the Stipulation of Settlement.

EXECUTIVE SUMMARY, Continued

The appraised value for the easement rights and related damages to the parcel was \$280,000. The Owner did not agree with the offer and secured legal counsel. During ongoing negotiations the City and County determined the cost of the easements and damages would equal a total take of the parcel. Just Compensation for the entire parcel was determined to be \$465,000 and was presented to the owner. The City proceeded with negotiations, and ultimately Eminent Domain proceedings. At the Hearing on Petition the Owner objected to the necessity of taking the entire property. He successfully argued that a partial take of 20' permanent easement and ancillary temporary easement along Maryland Avenue (leaving the Owner with the remainder) was appropriate taking for this project. It was agreed to reduce the taking, amend the Petition, and continue with eminent domain hearings.

The Eminent Domain Commission heard several days of testimony presented by the Owner, City and Ramsey County. They awarded \$867,624 based heavily on the Minimum Compensation Statute (M.S. 117.187). Ramsey County (through the City) appealed the award, the Owner cross appealed. Since that time, Ramsey County has taken over its own legal counsel and proceeded to negotiate with the Owner. We have arrived at a global settlement: A) amount of \$1M inclusive of any and all payments made to the owner; B) to settle all claims of acquisition, damages, interest, attorney fees, expert witness fees, costs, relocation and re-establishment; C) The Owner is to provide an accounting of attorney fees after payment; D) the Owner is to reimburse Ramsey County for costs related to water and storm service connections; and E) The Owner will not be allowed to open Maryland Avenue for utility purposes. The settlement costs are eligible for reimbursement from County State Aid Highway Funds (CSAH).

If this acquisition were to go through a jury trial, the award regarding real estate and severance damages may be higher or lower. Additional costs related to interest, attorney fees, expert witness fees, relocation/re-establishment and other elements included in the agreement would likely increase, resulting in a total cost to the County in excess of \$1M.

SUBJECT: Negotiated Settlement – Parcel #3 on the Rice Street at Maryland Reconstruction Project

ATTACHMENTS:

Stipulation of Final Settlement

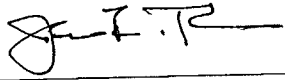
PREVIOUS ACTION:

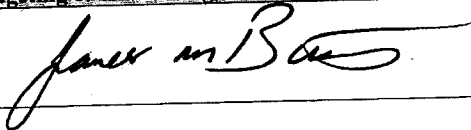
Resolution 2011-167 - Approval of 2011-2015 TIP

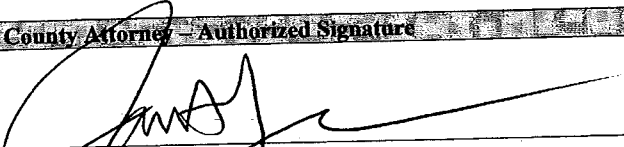
COUNTY MANAGER COMMENTS:

In accordance with Resolution 2011-167, the Board must approve negotiated settlements greater than \$15,000 over the appraised value for easement/fee rights acquired on a parcel.

SUBJECT: Negotiated Settlement – Parcel #3 on the Rice Street at Maryland Reconstruction Projec

Originating Department Request – Authorized Signature	Date
	4/25/12

Budgeting & Accounting – Authorized Signature	Date
	5-3-2012

County Attorney – Authorized Signature	Date
	4/26/2012

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

DRAFT RESOLUTION

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WHEREAS, The Ramsey County Public Works Department, in cooperation with the City of St. Paul, developed plans for the reconstruction of Maryland Avenue; and

WHEREAS, The City of St. Paul proceeded to acquire necessary right of way on Parcel 3 that included permanent and temporary easement through the Eminent Domain process; and

WHEREAS, The Ramsey County Public Works Department determined that the Maryland Reconstruction Project right of way acquisition had significant impacts to Parcel 3; and

WHEREAS, The Ramsey County Public Works Department and the property owner have negotiated a settlement for the loss of property, damage to the remainder of property, attorney fees, expert witness fees, interest, relocation and reestablishment costs, and all other costs and fees; and

WHEREAS, The Ramsey County Public Works Department and the owner have further agreed the owner shall provide an accounting of attorney fees following payment; and

WHEREAS, The Ramsey County Public Works Department and the owner have further agreed the owner shall reimburse Ramsey County for construction costs related to providing water service and storm stub, both to the right of way line, when constructed with the Maryland Avenue Project, and that the Owner shall not excavate the pavement of Maryland Avenue for utility purposes; and

WHEREAS, It is necessary to resolve this parcel and settle the dispute regarding right of way acquisition from Parcel 3; Now, Therefore, Be It

RESOLVED, The Ramsey County Board of Commissioners approves the Stipulation for Settlement for Parcel 3 with Bilal Alsadi and Iman Akli, husband and wife, in the amount of \$1,000,000, which is inclusive of any and all costs and claims, including real estate taken, severance damages, attorney fees, expert witness fees, interest, relocation and reestablishment costs, and any and all other costs and fees due the owner; and Be It Further

RESOLVED, The Ramsey County Board of Commissioners authorizes the County Manager to make budget adjustments increasing estimated revenue and appropriations to fund the Stipulation of Settlement.

STATE OF MINNESOTA

COUNTY OF RAMSEY

City of Saint Paul, a Minnesota municipal corporation,

Petitioner,

vs.

Eric R. Nelson, et al.,

Respondents.

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-10-10105

Case Type: Condemnation

**STIPULATION OF FINAL
SETTLEMENT**

PARCEL 3

THIS STIPULATION OF FINAL SETTLEMENT is entered into this ___ day of April, 2012, by and between Petitioner City of Saint Paul ("Petitioner" or "City") and Respondents Bilal Alsadi and Iman Akli, husband and wife ("Respondents" or "Owners").

RECITALS

1.01. On October 15, 2010, an eminent domain proceeding was commenced by the filing by Petitioner of its Petition and Motion for Transfer of Title and Possession Pursuant to Minn. Stat. §117.042 with respect to Parcel 3 and other lands described in Exhibit A attached thereto ("Original Petition").

1.02. Owners are the fee owners of Parcel 3.

1.03. On December 3, 2010, Owners filed their Answer and Objection of Respondents Bilal Alsadi and Iman Akli objecting to the public purpose and necessity for the takings of all of Parcel 3 as described in the Original Petition.

1.04. On January 11, 2011, Petitioner filed a motion seeking to amend the Original Petition as provided in the First Amended Petition and Motion for Transfer of Title and

Possession. The First Amended Petition modified the taking from Parcel 3 to be a partial taking, as described in the First Amended Petition.

1.05. At a court hearing herein on January 25, 2011, Owners agreed to withdraw their objections to the First Amended Petition, in return for Petitioner's agreement to reimburse Owners for up to \$25,000.00 of attorney's fees to the extent documented by Owners.

1.06. On February 4, 2011, the Court filed Findings of Fact, Conclusions of Law and Order Approving the First Amended Petition and Appointing Commissioners with respect to Parcel 3 as described in the First Amended Petition and as described in Exhibit A attached hereto ("City Easements").

1.07. On February 14, 2011, the District Court filed Findings of Fact, Conclusions of Law and Order Authorizing Transfer of Title and Possession with respect to Parcel 3 as described in the First Amended Petition ("Quick Take Order").

1.08. On February 28, 2011, Petitioner deposited \$464,000.00 with the District Court Administrator with respect to Parcel 3 pursuant to the Quick Take Order, thereby transferring ownership and the right of possession of the City Easements effective as of February 28, 2011.

1.09. On December 29, 2011, the Court Appointed Commissioners filed their Award of Commissioners in which they determined the just compensation to be due as a result of the takings from Parcel 3 to be \$867,624.00 ("Award of Commissioners").

1.10. On January 3, 2012, Petitioner served Notice of the Filing of the Award of Commissioners upon all parties and their counsel appearing in this matter with respect to Parcel 3.

1.11. On February 7, 2012, Petitioner filed a Notice of Appeal of the Award of Commissioners with respect to Parcel 3 and served notice thereof upon Owners and other

Respondents and their counsel as provided by Minn. Stat. Ch. 117. Thereafter, counsel for Owners served and filed a Notice of Cross-Appeal of the Award of Commissioners relating to Parcel 3.

1.12. On March 13, 2012, Owners made demand for partial payment of award pursuant to Minn. Stat. § 117.155.

1.13. On March 19, 2012, Petitioner deposited \$186,718.00 with the District Court Administrator with respect to Parcel 3, amounting to 75% of the Award of Commissioners and totaling \$650,718.00.

1.14. Minn. Stat. §117.031(a) entitles an owner to be reimbursed for his reasonable attorneys' fees, appraisal fees, and other costs incurred in an eminent domain proceeding if the amount of damages ultimately determined exceeds the amount of the last written offer of compensation made by the condemnor to the owner prior to filing of the eminent domain petition by at least 40%. That occurred in the present case with respect to Parcel 3.

1.15. The parties have agreed on terms and conditions under which they will each agree to dismiss their respective appeals of the Award of Commissioners with respect to Parcel 3, and to settle all claims by Owners relating to the takings from Parcel 3 in this proceeding, and desire that this Stipulation Agreement embody that agreement.

NOW THEREFORE, Petitioner and Owners hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into this Agreement.
2. Settlement Amount. Within ten (10) days following execution of this Agreement by all signators and its approval by the Board of Commissioners of Ramsey County, Petitioner will pay Owners the total sum of \$1,000,000.00 ("Settlement Amount"), in total satisfaction of all claims, damages, or losses arising from the takings authorized by the Quick Take Order,

including without limitation damages, losses, relocation and reestablishment benefits, interest on unpaid damages, attorneys' fees, appraisal fees and other costs. Petitioner will cause this Agreement to be presented to the Board of Commissioners of Ramsey County for approval as soon after execution by all signators as possible. All amounts the Petitioner deposited with the Court with respect to Parcel 3 before the execution of this Agreement shall be credited toward payment of the Settlement Amount. The balance of the Settlement Amount shall be deposited with the District Court Administrator for Ramsey County in this proceeding. The owners are entitled to receive any interest which has accrued on the funds deposited by Petitioner with the District Court Administrator. For purposes of accounting, the Settlement Amount is allocated as follows: \$867,000 for damages and interest relating to the taking; \$35,000 for relocation and reestablishment of Petitioner's business; and \$98,000 for attorney fees.

3. Other Undertakings.

(a) Owners agree to secure new water service and storm sewer service for Parcel 3, and ensure such service is installed during the construction of the 2012 Maryland and Rice Street Improvement Project so that such improvements are installed before the final installation of the street surface. If any new service for Parcel 3 is required in the future, Owners agree to restore the street surface of the Maryland and Rice project as required by Ramsey County Public Works.

(b) Owners agree to reimburse Ramsey County, City of St. Paul or St. Paul Regional Water Services for the reasonable costs of the new water and storm sewer service. Ramsey County Public Works will assist Owners in designing and facilitating the installation of these services.

(c) Upon receipt by Owners of the Settlement Amount, Owners agree to provide Petitioner with a copy of the attorney retainer or engagement agreement related to the Owners'

retention of Ferdinand F. Peters, Esq. Law Firm, and the services of Ferdinand Peters, Benjamin Loetscher, and any other related staff and associates, together with a copy of records reflecting the hours expended for the work related to such retention, together with a description of the work performed.

3. Release and waiver. In consideration of the dismissal of the appeals, payment of the Settlement Amount, and other undertakings set forth herein, the Owners hereby release and waive any and all claims against the Petitioner and Ramsey County arising from the takings authorized by the Quick Take Order, known and unknown, arising now or in the future, including without limitation claims for loss or damage of any kind, claims for relocation and reestablishment benefits, interest, attorney's fees, appraisal and expert fees, and other costs and disbursements incurred in this proceeding.

4. Dismissal. Effective upon Petitioner's deposit of the balance of the Settlement Amount with the District Court Administrator for Ramsey County, Petitioner and Owners hereby agree to dismiss their respective appeals from the Award of Commissioners.

5. Continuing Jurisdiction of the Court. The parties stipulate and agree that the above Court will have continuing jurisdiction of this proceeding. Either party may seek enforcement or interpretation of this Agreement by motion to the Court and notice to the other party pursuant to the Minnesota Rules of Civil Procedure.

6. Other Terms.

(a) This Agreement is entered into pursuant to the laws of the State of Minnesota and shall be interpreted and enforced in accordance with the laws of said State.

(b) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

(c) The covenants and provisions of this Agreement shall be binding upon and inure to the benefit of Owners and City and their respective successors and assigns.

(d) Owners and City shall each have the right to specifically enforce the provisions of this Agreement.

(e) In the event that this Agreement is not approved by the Board of Commissioners of Ramsey County on or before May 31, 2012, this Agreement shall be null and void and the parties will reserve and maintain all rights and claims which would otherwise have been released and waived under this Agreement.

(f) The Section headings of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of the Sections they accompany.

(signature pages to follow)

Dated: April __, 2012

CITY OF SAINT PAUL

By: _____
Its: _____


JOHN J. CHOI
RAMSEY COUNTY ATTORNEY

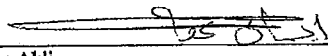
Dated: April __, 2012

By: _____
James A Mogen (#0309266)
Assistant Ramsey County Attorney
121 East 7th Place, Suite 4500
St. Paul, MN 55101
Telephone: 651-266-3121
Fax: 651-266-3032

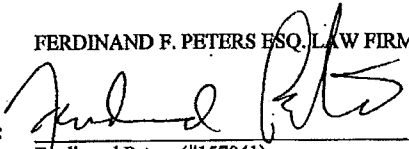
ATTORNEYS FOR PETITIONER

Dated: April 16, 2012


Bilal Alsadi


Iman Akli

Dated: April 16, 2012

Ferdinand F. Peters Esq. Law Firm
By: 
Ferdinand Peters (#157041)
Benjamin Loetscher (#0389037)
Lakes and Plains Office Building
842 Raymond Ave, Suite 201
St. Paul MN 55114
(651) 647-6257

ATTORNEYS FOR RESPONDENTS
BILAL ALSADI AND IMAN AKLI

EXHIBIT A

Parcel No. 3: Property I.D. No. 30-29-22-22-0008

Property Address: 1200 Rice Street, Saint Paul, MN 55117-4903

Description of Subject Property:

Lots 10, 11 and 12, Block 2, Stinson's Rice Street Addition to the City of Saint Paul

According to the map or plat thereof on file and of record in the Office of the County Recorder for Ramsey County, Minnesota.

Description of Property Interests to be Acquired in Eminent Domain Proceedings:

1. A permanent easement for street and utility purposes over, under, across and through the north 20 feet of Lot 10, Block 2, STINSON'S RICE STREET ADDITION to the City of Saint Paul, and also across that part of said Lot 10 lying northerly of a line described as follows:

Beginning at a point on the west line of said Lot 10 being 35.00 feet southerly of the northwest corner thereof, thence northeasterly to a point on the southerly line of the north 20 feet of Lot 10 being 15 feet easterly of the west line of said Lot 10 and there terminating.

Said permanent easement contains 2,642 square feet, more or less.

2. A temporary easement for construction purposes over, under, across and through the southerly 5 feet of the northerly 25 feet of Lot 10, Block 2, STINSON'S RICE STREET ADDITION to the City of Saint Paul, except that part of said Lot 10 lying northerly of a line described as follows:

Beginning at a point on the west line of said Lot 10 being 35.00 feet southerly of the northwest corner thereof, thence northeasterly to a point on the southerly line of the north 20 feet, being 15 feet easterly of the west line of said Lot 10 and there terminating.

Said temporary easement contains 570 square feet, more or less. Said temporary easement shall commence May 1, 2011 and expire October 1, 2012.

3. A temporary easement for construction purposes over, under, across and through those parts of Lots 10 and 11, Block 2 STINSON'S RICE STREET ADDITION to the City of Saint Paul, lying northerly of a line lying 58 feet southerly of, as measured at right angles to, and parallel with the North line of said Lot 10, and lying southerly of a line described as follows:

Beginning at a point on the West line of said Lot 10 being 35.00 feet southerly of the northwest corner thereof, thence northeasterly to a point on the southerly line of the north 20 feet of said Lot 10, being 15 feet easterly of said West line of Lot 10, thence easterly along said southerly line of the north 20 feet of Lot 10 to the easterly line of said Lot 10, and there terminating.

Said temporary easement contains 4852 square feet, more or less. Said temporary easement shall commence 30 calendar days following the date of a written notice to the owners of Parcel 3 from Petitioner, or Ramsey County, or their contractor, as the case may be, and shall expire sixty (60) calendar days following the date of such written notice.

Said temporary easements shall include the right of Petitioner, Ramsey County, and their contractors, agents, and employees to enter said temporary easement tracts at all reasonable times to grade and excavate thereon, and to cut, trim and remove trees, shrubbery, growing crops and surface improvements within said temporary easement tracts, as needed to facilitate Petitioner's construction and access activities within said permanent and temporary easement tracts.

Interests Being Encumbered:

The names of the parties having an interest in the above-described land and the nature of their interests to the best of Petitioner's knowledge based upon a review of records in the Offices of the County Recorder and Registrar of Titles in and for Ramsey County, Minnesota, are set forth below. It is the intention of the Petitioner to encumber all interests in the above described real property, and to encumber all rights of possession of all holders of an interest in said property, including, but not limited to, all of the interests of those parties names below:

NAME	NATURE OF INTEREST
Bilal Alsadi, aka Bilal Mohammed Alsadi, and Iman Akli	Fee Owners, as joint tenants
Spouse of Bilal Alsadi, aka Bilal Mohammed Alsadi, if any	Possible holder of an interest
Spouse of Iman Akli, if any	Possible holder of an interest
United States of America	Judgment in <i>USA vs. Bilal Mohammed Alsadi</i> , docketed July 1, 1996, Case Number 3-96 CR-22, in the amount of \$100
United States Department of Agriculture	Judgment in <i>U.S. Department of Agriculture vs. Bilal Mohammed Alsadi</i> , docketed July 1, 1996, Case No. 3-96CR-22, in the amount of \$4,003.00
State of Minnesota Department of Health	Judgment in <i>Minnesota Department of Health vs. Bilal Mohammed Alsadi</i> , docketed July 1, 1996, Case No. 3-96 CR-22, in the amount of \$829.00

Capital Bank, organized and existing under the laws of the State of Minnesota	Mortgage executed by Bilal Alsadi and Iman Akli, husband and wife, dated April 15, 2005, filed June 3, 2005 as Document No. 3860777, in the original amount of \$412,500, in favor of Capital Bank, which was modified by Note Mortgage Modification Agreement filed April 16, 2008, as Document No. 4091396.
Ramsey County	Real Estate Taxes
City of Saint Paul	Special Assessments