

ITEM NO. 24
APRIL 14, 2010 LEGAL AND FINANCE COMMITTEE AGENDA

AGREEMENT FOR REAL ESTATE BROKER SERVICES

LF041410-16

This Agreement is entered into by and between the City of Rapid City, (hereafter "City") a South Dakota municipal corporation, and Kenneth L. Kirkeby, (hereafter "Broker") a licensed real estate broker in the State of South Dakota.

WHEREAS, the City desires to hire a licensed real estate broker for the purpose of selling certain city-owned surplus property; and

WHEREAS, Broker, a licensed South Dakota real estate broker, has submitted a proposal in response to the City's Request for Proposals offering to provide real estate services; and

WHEREAS, the parties have determined that it is in their mutual best interest to enter into an agreement for real estate broker services.

NOW, THEREFORE BE IT AGREED by the parties as follows:

1. The City owns property located within the corporate limits of the City of Rapid City (hereinafter referred to as "the Property") commonly known as the Wally Byam property and legally described as:

Lot One (1) Wally Byam Addition, Section Nine (9), Township One North (T1N), Range Eight East (R8E), Black Hills Meridian, Rapid City, Pennington County, South Dakota; and

The South Half of the Southwest Quarter of the Northeast Quarter (S½SW¼NE¼), less Lot One (1) of Wally Byam Addition, less Lot H2 and less right of way; the South Half of the Southeast Quarter of the Northwest Quarter (S½SE¼NW¼), less Lot H1; the balance of the Northeast Quarter of the Southwest Quarter (NE¼SW¼) less Lot H1; and the balance of the West Half of the Southeast Quarter (W½SE¼), Section Nine (9), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota; and

Lot Two (2) of Tract A of the Northeast Quarter of the Southwest Quarter (NE¼SW¼) of Section Nine (9), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota; and

The balance of Tract A of the East Half of the Southwest Quarter (E½SW¼) less Lot H1, Section Nine (9), Township One North (T1N), Range Eight East (R8E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota; and

2. Broker agrees to provide the City professional real estate broker services including listing the city property on the multiple listing service. Such services shall include, but not be limited to marketing of the property in accordance with the proposal submitted by Broker to the City. Broker's proposal to the City in response to the RFP is incorporated herein as a part of this agreement, except where specifically modified by this agreement. All marketing expenses shall be the sole responsibility of the Broker. Broker shall use his best professional judgment and effort to market the Property and secure a purchaser in accordance with the standards generally expected of licensed real estate brokers.

3. Broker shall provide the City within sixty (60) days of the approval of this agreement by the Rapid City Common Council his recommendations for maximizing the value of the property by either changing the current platting of the property, including vacating the existing platting of the property, and/or making additional subdivision of the property such that the total value of the city-owned property will be maximized. Such recommendations shall take account of the geography of the land, the existing life estates, the location of utilities, proximity to South Dakota Highway 44, current zoning of the property, potential changes in zoning that could affect the value of the property, and any other matter which, in the judgment of the Broker ought to be considered by the City.

4. Within thirty (30) days of receiving the recommendation of the Broker, the City shall either undertake to implement the recommendation of the broker or provide other direction to the Broker about how the City wants to have the property listed for sale, (i.e., as an entire parcel or other subdivision as determined by the Council.)

5. For the services provided under this agreement, the Broker shall be entitled to receive five percent (5%) of the selling price realized by the City upon the sale of all or a portion of the Property. The Broker shall be responsible for paying any commission incurred as a result of listing the property in the multiple listing system or as a result of any other agreements with other real estate brokers or others.

6. Broker acknowledges that any offers received for the purchase of the Property or any portion thereof must be reviewed and approved by the Rapid City Common Council. The Common Council has two regular meetings each month. Broker will endeavor to communicate to potential purchasers the timeframes of Council meetings such that the City will have adequate time to consider and respond to any offers. The City acknowledges that the Broker does not have the ability to control the terms of any offer, including the timeframe for responding to an offer, that a potential purchaser may bring forth. Broker agrees that any offers will be communicated as quickly as possible to the City Attorney.

7. This agreement shall remain in full force and effect for one (1) year from the date of its approval by the Rapid City Common Council. In addition, for three (3) months following the termination of this agreement, the real estate broker shall be entitled to the commission under this agreement if the City enters into a sales agreement with a person whom the real estate broker showed the property during the one (1) year term of the agreement.

8. Either party to this agreement may terminate the agreement upon the other party's failure to meet the specific time frames for the obligations each has undertaken herein by giving fifteen (15) days written notice to the other party.

9. The City of Rapid City acknowledges that the Broker may act as real estate agent for the buyer of the property, as well as representing the City of Rapid City. In any case where Broker represents the potential buyer of the property, that fact shall be fully disclosed to the City of Rapid City, along with the complete disclosure of the terms of the agreement with the potential purchaser, and upon such full and complete disclosures, the City shall agree to the Broker's representation of both parties to the transaction in accordance with the standard procedures for a real estate broker to act in such capacity.

10. Broker shall at all times act in a professional manner in his representation of the City of Rapid City and shall fully fulfill the duties owed to a client by a licensed real estate broker in the State of South Dakota, as well as all duties owed to potential purchasers.

11. Any dispute arising out of this agreement shall be litigated only in the Seventh Judicial Court for the State of South Dakota, Pennington County, located in Rapid City, South Dakota. Notwithstanding principles of conflict of laws, the laws of the State of South Dakota shall govern this agreement.

12. This written document encompasses the entire agreement of the parties. All prior negotiations are incorporated herein or intentionally omitted.

Dated this _____ day of _____, 2010.

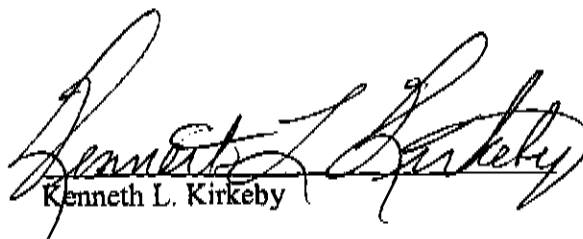
CITY OF RAPID CITY

By: _____
Mayor

ATTEST:

Finance Officer

(SEAL)


Kenneth L. Kirkeby