# CITY OF SOUTH ST. PAUL
## MEETING AGENDA

## ECONOMIC DEVELOPMENT AUTHORITY

Council Chambers
125 3rd Avenue North
South St. Paul, MN  55075

Monday, June 2, 2025
IMMEDIATELY FOLLOWING THE CONCLUSION OF THE 7:00 P.M. MEETING OF THE CITY COUNCIL

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. APPROVAL OF AGENDA**

**4. CONSENT AGENDA**

All items listed on the Consent Agenda are items, which are considered routine and will be approved by one motion. There will be no separate discussion of these items unless requested by a member of the governing body or citizen, in which case the item will be removed from the consent agenda and considered at the end of the Consent Agenda.

A. EDA Minutes for May 5, 2025

**5. PUBLIC HEARINGS**

**6. GENERAL BUSINESS**

A. **Approval of a Purchase Agreement with Petroleum Services, LLC. for Real Property located at 417 Concord Street North, Resolution 2025 - 9**

**7. ITEMS FOR FUTURE FOLLOW-UP**

General communications of the President and Commissioners are provided and may be considered for inclusion on a future agenda. There will be no discussion or decisions made related to these items at this meeting.

**8. ADJOURNMENT**

# ECONOMIC DEVELOPMENT AUTHORITY AGENDA REPORT

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|---|---|
| **DATE:** | June 2, 2025 |
| **DEPARTMENT:** | City Clerk |
| **PREPARED BY:** | Deanna Werner |
| **AGENDA ITEM NUMBER:** | 4.A. |

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
EDA Minutes for May 5, 2025

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**

**OVERVIEW**
Approve as presented by consent.

**SOURCE OF FUNDS**
N/A

**ATTACHMENTS**
1. 05-05-2025 EDA Minutes (1)

# SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY MINUTES OF MAY 5, 2025

## 1. CALL TO ORDER

President Jimmy Francis called the regular meeting of the EDA to order at 8:00 PM on Monday, May 5, 2025.

## 2. ROLL CALL

Present: Tom Seaberg, Jimmy Francis, Lori Hansen, Pam Bakken, Todd Podgorski, Matt Thompson, Joe Kaliszewski

Absent: None

Staff Present:
Ryan Garcia, EDA Executive Director
Deanna Werner, EDA Secretary
Kori Land, City Attorney

## 3. APPROVAL OF AGENDA

## 4. CONSENT AGENDA:

All items listed on the Consent Agenda are items, which are considered routine by the City Council and will be approved by one motion. There will be no separate discussion of these items unless a Council member or citizens requests, in which case the item will be removed from the consent agenda and considered at the end of the Consent Agenda.

Moved by: Matt Thompson / Joe Kaliszewski
Moved: To approve agenda as presented.
Vote: 7 ayes / 0 nays, motion Passed

A. Minutes of the April 7th, 2025 EDA Meeting

## 5. GENERAL BUSINESS:

A. Termination of Development Agreement

Moved by: Tom Seaberg / Pam Bakken
Moved: To Approve Resolution 2025-008, Termination of a Development Agreement
Vote: 7 ayes / 0 nays, motion Passed

B. EDA Annual Report

Moved by: Tom Seaberg / Matt Thompson
Moved: To Approve EDA Annual Report
Vote: 7 ayes / 0 nays, motion Passed

## 6. ITEMS FOR FUTURE FOLLOW-UP:

General communications of the President and Commissioners are provided and may be considered for inclusion on a future agenda. There will be no discussion or decisions made related to these items at this meeting.

**7. ADJOURNMENT**

Moved by: Joe Kaliszewski / Pam Bakken
Moved: To Adjourn
Vote: 7 ayes / 0 nays, motion Passed

The meeting was adjourned at 8:06 PM.

Deanna Werner

/s/: Deanna Werner
City Clerk

# ECONOMIC DEVELOPMENT AUTHORITY AGENDA REPORT

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| **DATE:** | June 2, 2025 |
| **DEPARTMENT:** | Economic Development |
| **PREPARED BY:** | Ryan Garcia |
| **AGENDA ITEM NUMBER:** | 6.A. |

**MEETING TYPE**
Regular Meeting

**AGENDA ITEM**
**Approval of a Purchase Agreement with Petroleum Services, LLC. for Real Property located at 417 Concord Street North, Resolution 2025 - 9**

**ACTION TO BE CONSIDERED OR DESIRED OUTCOME**
Motion to approve Resolution 2025 – 9, authorizing a purchase agreement with Petroleum Services USA, LLC for the acquisition of real property at 417 Concord Street North.

**OVERVIEW**
The EDA has been monitoring the vacant property at 417 Concord Street North (Jiffy Gas) for several years, and has inquired as to the current owner's openness to a negotiated sale from time to time. Until about 6 months ago, the current owner (Petroleum Services USA, LLC – David Berg) has maintained that his preference was to "wait out" unfavorable economic conditions and re-open the gas station and small convenience store rather than sell the property. In December 2024, our economic development consultant (Kreuger Real Estate Advisors) presented the seller an offer to purchase the property soon after the owner listed the property for sale. The owner did not formally respond to the offer and continued to "test the market". In recent weeks, the Seller has re-engaged the EDA and expressed an interest in selling the property to the EDA.

**About the Property:**
The property encompasses approximately 0.36 acres at the southwest corner of Concord Street North and Wentworth Avenue. It has been developed with a small (less than 500 square feet) commercial building and motor vehicle fueling canopy (currently 3 fueling islands with 6 dispensers each) since the late 1960s. The gas station has not been operational since at least 2022, and lost its legal nonconforming rights (gas stations are not a permitted or conditional use in the CGMU zoning district). The property adjoins property that is owned by the South St. Paul Economic Development Authority to the south and west (the bowling alley parking lot is owned by the EDA).

**Key Considerations:**
The EDA is encouraged to review the Agreement in its entirety prior to Monday's meeting, if possible, but Staff provides the following summary of key items of interest to note as the EDA considers the agreement:

- *Acquisition Price:* $225,000
- Due Diligence:
  - Environmental Site assessments (Phase I, Phase II, Vapor, Geotechnical and Hazardous Building Material/Asbestos testing are complete) and No Association Determination from MPCA
  - Title Commitment
  - ALTA
- *Closing*: No later than October 30, 2025
- Seller Rights:
  - Remove personal property and signage from the property prior to closing.
  - Granted 45 days from execution to receive written commitment from Little Log House Pioneer Village to accept donation of commercial building. If accepted, Seller is responsible for restoring the site to a condition meeting approval of City Engineer.

**SOURCE OF FUNDS**

The property is located within the Concord Street Redevelopment Project Area. Acquisition for purposes of redevelopment is an eligible expense in the Concord Street Redevelopment Project Area and funded partially with retained/pooled increment within the Concord Street Tax Increment Finance (TIF) Fund (40490). In addition, the EDA manages a Redevelopment Fund (Fund 20284) which has been established and partially funded (see Resolutions 2024 – 1, 2024 – 2, 2024 – 3, and 2024 – 4) for the purposes of supporting the City's 2022 Economic Development Strategy.

**ATTACHMENTS**

1. Resolution 2025-09
2. Purchase Agreement - 417 Concord Street North

South St. Paul Economic Development Authority
Dakota County, Minnesota

**RESOLUTION NO. 2025 – 9**

**RESOLUTION AUTHORIZING THE APPROVAL OF A PURCHASE AGREEMENT BETWEEN THE SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY AND PETROLEUM SERVICES USA, LLC.**

**WHEREAS,** the South St. Paul Economic Development Authority (the "EDA") is authorized pursuant to Minnesota Statutes, Sections 469.090 to 469.1081 (the "EDA Act") to acquire right, title, and interest in real property for economic development purposes; and

**WHEREAS,** the EDA has identified certain property within the City of South St. Paul (the "City"), Dakota County, Minnesota, as legally described on attached Exhibit A (the "Real Property"), for assembly with adjacent EDA-owned lands to facilitate economic development in the City; and

**WHEREAS,** the EDA desires to acquire fee simple title to the Real Property from Petroleum Services USA, LLC (the "Seller") in order to facilitate economic development; and

**WHEREAS,** the EDA has reviewed and considered a Purchase Agreement for the Real Property and has determined that it is in the EDA's and the City's best interests to execute the Purchase Agreement and acquire fee simple title to the Real Property.

**NOW, THEREFORE, BE IT RESOLVED** by the South St. Paul Economic Development Authority as follows:

1. That the Purchase Agreement Between the EDA and the Seller represents a freely negotiated purchase and sale of the Real Property which has been made available on the open market; and
2. That the Purchase Agreement is approved, subject to minor modifications by the City Attorney; and
3. That the Executive Director and President of the EDA are authorized and directed to execute the Purchase Agreement on behalf of the EDA; and
4. That the Executive Director, City Attorney, and President are authorized to take those actions necessary and customary to effectuate the purchase herein contemplated.

Adopted this 2nd day of June, 2025.

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| ______________________________ | ______________________________ |
| James P. Francis | Ryan Garcia |
| President | Executive Director |

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Real property in Dakota County, Minnesota, legally described as follows:

Tract A:

Lots 1, 2, 3 and 4, Block 2, Cremer's Addition to South St. Paul, Dakota County, Minnesota, except the following described parcels:

That part of Concord Street originally platted in the City of South St. Paul adjoining and Northeasterly of Lot 1, Block 2, Cremer's Addition to South St. Paul, according to the recorded plat thereof, which lies Southeasterly of the Southeasterly line of Wentworth Avenue and Southwesterly of the Southwesterly line of Concord Street, described as follows: Beginning at a point on the Northwesterly line of said Lot 1, a distance of 11 feet Southwesterly of the Northeast corner, thence Northeasterly along the Northwesterly line of said Lot 1, projected a distance of 30 feet, thence deflect to the right 109 degrees 59 minutes 49 seconds a distance of 15 feet, thence deflect to the right 99 degrees 59 minutes 49 seconds a distance of 28.72 feet to the point of beginning and there terminating.

AND

That part of Lots 1, 20, 3 and 4, Block 2, Cremer's Addition to South St. Paul according to the recorded plat thereof, described as follows: Beginning at the Northwest corner of said Block 2, thence Southerly along the West line of said Block 2 a distance of 89 feet to the Southwest corner of said Lot 4, thence East along the Southerly line of said Lot 4 a distance of 35.22 feet, thence Northwesterly a distance of 93.19 feet to a point on the Northwesterly line of said Lot 1 located 11.8 feet Easterly of the Northwest corner, thence Westerly along the Northwesterly line of said Lot 1 a distance of 11.3 feet to the point of beginning and there terminating.

Tract B:

That part of Lot 5, Block 2, Cremer's Addition to South St. Paul, according to the plat of file or of record in the Office of the County Recorder in and for Dakota County, Minnesota described as follows: Beginning at the Northeast corner of said Lot 5; thence Southerly along the East line of said Lot 5, a distance of 25 feet, thence Westerly along the South line of said Lot 5, a distance of 58.27 feet; thence Northwesterly 78 degrees 18 minutes 06 seconds to the North line of said Lot 5, thence Easterly along the North line of said Lot 5 to a point of beginning and there terminating.

That part of Concord Street as originally platted in the City of South St. Paul adjoining and Northeasterly of Lots 1, 2, 3, 4, 5, Block 2, Cremer's Addition to South St. Paul, according to the plate thereof on file and of record in the County Recorder in and for Dakota County, Minnesota, described as follows: Bounded on the East by the Westerly right of way line of newly constructed Trunk Highway 56; bounded on the South by the Easterly extension of the South line of said Lot 5, bounded on the West by East line of said Block 2, and bounded on the North by the following described line: Beginning at a point of Northwesterly line of said Lot 1, 11 feet Southwesterly of the Northeast corner, thence deflecting from the Northwesterly line Southeasterly 29 degrees 29 minutes 49 seconds to the Westerly right of way line of newly constructed Trunk Highway 56 and there terminating.

PIDs:
36-18600-02-041; Abstract Property
36-18600-02-103; Abstract Property

*[Title Commitment legal description to govern]*

# PURCHASE AGREEMENT

**THIS PURCHASE AGREEMENT** ("Agreement") is made as of _________________, 2025 ("Effective Date"), by and between Petroleum Services USA, LLC, a Minnesota limited liability company ("Seller"), and the South St. Paul Economic Development Authority, a public body corporate and politic under the laws of Minnesota ("EDA" or "Buyer").

## RECITALS

A. Seller is the fee owner of real property located in the City of South St. Paul, Minnesota, legally described on Exhibit A ("Property"), attached hereto and incorporated herein by reference.

B. EDA desires to purchase the Property from Seller and Seller desires to sell the same to EDA, all on the terms and conditions of this Agreement.

NOW THEREFORE, for mutual consideration, the Seller and the EDA agree as follows:

1. **Sale**.

   1.1. **Sale**. Subject to the terms and provisions of this Agreement, Seller shall sell to EDA, and EDA shall purchase from Seller, the Property on the date of Closing.

   1.2. **Purchase Price**. The purchase price to be paid by EDA to Seller for the Property shall be Two Hundred Twenty-Five Thousand and No/100 Dollars ($225,000.00) (the "Purchase Price"), payable as follows: (a) Ten Thousand and No/100 Dollars ($10,000.00), as earnest money, to be paid to DCA Title Inc., 750 Main St. Suite 208, Mendota Heights, MN 55118 ("Title") within five (5) business days of the Effective Date of this Agreement; and (b) the balance on the Closing Date (as defined in Section 6) subject to those adjustments, prorations, and credits described in this Agreement, in cash or certified funds or by wire transfer pursuant to instructions from Seller or Title. The Closing will occur at Title, with Michelle Smallidge designated as closer, unless otherwise agreed to by the parties. If this Agreement is terminated by the EDA as a result of a default by Seller, then the Earnest Money shall be returned to the EDA and neither Seller nor the EDA shall be liable to the other for any further obligations under this Agreement (except for such obligations as specifically survive termination of this Agreement).

2. **Available Surveys, Tests, and Reports.** Within five (5) days of the Effective Date, Seller shall cause to be delivered to the EDA to the extent same are in the possession and control of Seller: (a) copies of any surveys, soil tests and environmental reports previously conducted on the Property; (b) copies of leases associated with the Property, (c) copies of existing title work for the Property (the "Due Diligence Materials"). Seller makes no representations or warranties regarding the accuracy or completeness of the Due Diligence Materials. The EDA acknowledges that the sale of the Property is "AS-IS", "WHERE IS," and "WITH ALL FAULTS", and that it is the obligation of EDA to conduct and complete

its due diligence and investigations relating to the Property.

3. **<u>EDA's Investigations</u>.** At any time following the Effective Date up to the Closing Date plus exercised extensions described in paragraph 3.1, Seller shall allow EDA and EDA's agents access to the Property without charge and at all times for the purpose of EDA's investigation and testing of the Property, including surveying and testing of soil and groundwater and any and all related environmental testing ("EDA's Investigations"); provided, however, EDA shall not perform any invasive testing unless (a) Seller gives its prior approval of EDA's consultant that will perform the testing, which approval shall not be unreasonably withheld, conditioned or delayed, and (b) EDA gives Seller reasonable prior notice of such testing. EDA shall pay all costs and expenses of the EDA's Investigations and shall indemnify and hold Seller and the Property harmless from all costs and liabilities, including but not limited to mechanics' liens, relating to activities on the Property related to EDA's Investigations, however, EDA shall not be responsible for liens, liability, loss, expense or costs arising out of the discovery or presence of Hazardous Substances (as such term is defined in Section 9.1(H)) on the Property or otherwise arising out of Seller's noncompliance with any Environmental Law (as such term is defined in Section 9.1(H)) or other law or regulation. Seller shall have the right to accompany EDA during any of EDA's Investigations of the Property. If requested by Seller, EDA shall provide to Seller copies of all third-party, non-confidential written test results and reports conducted as part of EDA's Investigations. EDA shall pay all of the costs and expenses associated with EDA's Investigations, to cause to be released any lien on the Property arising as a result of EDA's Investigations and to repair and restore, at EDA's expense, any damage to the Property caused by EDA's Investigations. The indemnification obligations set forth herein shall survive termination or cancellation of this Agreement.

3.1. **<u>Extension of EDA's Investigations</u>**. EDA will have the right to extend EDA's Investigations, if determined necessary through environmental assessment, for up to an additional sixty (60) days ("Extension of EDA's Investigations") to allow further testing and analysis. To exercise its Extension of EDA's Investigations, EDA must provide written notice to Seller prior to the end of the Closing Date.

4. **<u>Insurance; Risk of Loss</u>.** Seller assumes all risk of destruction, loss or damage to the Property prior to the Closing Date. If, prior to the Closing Date, all or any portion of the Property or access thereto is condemned, taken by eminent domain, or damaged by cause of any nature, Seller shall immediately give EDA notice of such condemnation, taking or damage. After receipt of notice of such condemnation, taking or damage (from Seller or otherwise), EDA shall have the option (to be exercised in writing within thirty (30) days of receipt of such notice) either (a) to require Seller to (i) convey the Property at Closing (as defined in Section 6) to EDA in its damaged condition, upon and subject to all of the other terms and conditions of this Agreement, without reduction of the Purchase Price, (ii) assign to EDA at Closing all of Seller's right, title and interest in and to any claims Seller may have to insurance proceeds, condemnation awards and/or any causes of action with respect to such condemnation or taking of or damage to the Property or access thereto, and (iii) pay to EDA at Closing by certified or official bank check all payments made prior to the Closing Date under such insurance policies or by such condemning authorities, or (b)

to terminate this Agreement by giving notice of such termination to Seller, whereupon this Agreement shall be terminated and thereafter neither party shall have any further obligations to the other, except for such obligations and liabilities that specifically survive termination of this Agreement. If the right to terminate this Agreement is not exercised in writing within such thirty (30) day period, such right shall be deemed to have been waived.

5. **Contingencies**.

5.1. **EDA's Contingencies**.

A. Unless waived by EDA in writing or waived by the passage of time in the manner set forth herein, EDA's obligation to proceed to Closing shall be subject to (a) performance by Seller of its obligations hereunder, (b) the continued accuracy of Seller's representations and warranties provided in Section 9.1, and (c) EDA's satisfaction, in EDA's sole discretion, as to the contingencies described in this Section 5.1 within the time periods set forth below:

(1) On or before the Closing Date, EDA shall have determined, in its sole discretion, that it is satisfied with (a) the results of and matters disclosed by EDA's Investigations, EDA's physical and environmental inspections of the Property (including, but not limited to surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property), (b) all costs associated with the mitigation, remediation, and clean-up related to the EDA Investigations, and (c) all other inspections and due diligence regarding the Property, including any Due Diligence Materials. If EDA has not terminated this Agreement on or before the Closing Date, the contingency set forth in this paragraph shall be deemed waived.

If there is an Extension of EDA's Investigations, then on or before one hundred and fifty (150) days following the Effective Date, EDA shall have determined, in its sole discretion, that it is satisfied with (a) the results of and matters disclosed by EDA's Investigations, EDA's physical and environmental inspections of the Property (including, but not limited to surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property) and (b) all other inspections and due diligence regarding the Property, including any Due Diligence Materials. Notwithstanding the foregoing, any acceptance by EDA pursuant to this Section 5.1.A.(1) shall be subject to Section 11. If EDA has not terminated this Agreement on or before the Closing Date plus any exercised extensions, the contingency set forth in this paragraph shall be deemed waived.

(2) On or before the Closing Date, EDA shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in a form and substance satisfactory to EDA in EDA's sole discretion, not disclosing any encumbrance not acceptable to EDA in EDA's sole discretion. If EDA has not terminated this Agreement on or before the Closing Date, the contingency set forth in this paragraph shall be deemed waived.

(3) On or before the Closing Date, EDA shall obtain an ALTA survey for the Property certified to EDA and Title.

(4) On or before the Closing Date, Seller shall have obtained releases of the Property from any and all mortgages or other monetary liens affecting any of the Property.

(5) On or before the Closing Date, Seller shall have obtained all valid, necessary and sufficient waivers, assignments, subordinations, non-disturbance, attornments, approvals, authorizations, estoppel certificates and consents of each and every party whose waiver, subordination, non-disturbance, attornment, approval, authorization, estoppel certificate or consent shall be required to transfer the Property and consummate the transactions contemplated by this Agreement.

(6) On or before the Closing Date, Seller shall execute an assignment and assumption of surviving contracts, permits and licenses, warranties, and intangible property conveying to EDA with warranties the surviving contracts, permits and licenses, warranties and intangible property, free and clear of all encumbrances, together with the consent of all parties having the right to consent to such assignment, if necessary.

(7) On or before the Closing Date, the proper termination of any and all lease rights related to the Property to the satisfaction of EDA.

(8) On or before the Closing Date, the vacation of the Property by the Seller and/or any tenant.

(9) On or before the Closing Date, Seller shall execute a Bring-Down Certificate certifying that all of the warranties and representations made by Seller in this Agreement remain true as of the date of closing.

(10) On or before the Closing Date, the waiver, termination, or elimination of any and all option to purchase rights, Rights of First Refusal, or Rights of First Offer related to the Property to the

satisfaction of the EDA.

The foregoing contingencies are for EDA's sole and exclusive benefit and one (1) or more may be waived in writing by EDA in its sole discretion, or by the passage of time as set forth hereinabove. Seller shall reasonably cooperate with EDA's efforts to satisfy such contingencies, at no out of pocket cost to Seller or assumption of any obligation or liability by EDA. EDA shall bear all cost and expense of satisfying EDA's contingencies. If any of the foregoing contingencies have not been satisfied on or before the applicable date, then this Agreement may be terminated, at EDA's option, by written notice from EDA to Seller. Such written notice must be given on or before the applicable date set forth herein above for such contingency, or EDA's right to terminate this Agreement pursuant to such contingency shall be waived. If EDA terminates this Agreement as a result of a failure of a EDA contingency prior to the applicable date, the Earnest Money shall be returned to the EDA. Upon termination, neither party shall have any further rights or obligations against the other regarding this Agreement or the Property, except for such obligations that survive termination of this Agreement.

B. If EDA elects not to exercise any of the contingencies set out herein, such election may not be construed as limiting any representations or obligations of Seller set out in this Agreement.

5.2. **Seller's Contingencies**. Seller's obligation to proceed to Closing shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions:

A. EDA shall have performed and satisfied all agreements, covenants and conditions required pursuant to this Agreement to be performed and satisfied by or prior to the Closing Date.

B. All representations and warranties of EDA contained in this Agreement shall be accurate as of the Closing Date.

C. On or before the Closing Date, the termination or elimination of any and all option to purchase rights, Rights of First Refusal, or Rights of First Offer related to the Property, upon terms and conditions satisfactory to Seller in its sole and absolute discretion.

Seller may in its sole discretion waive any of the conditions precedent set out in this Section. If any of the foregoing contingencies have not been satisfied on or before the dates set forth herein, then this Agreement may be terminated, at Seller's sole option, by written notice from Seller to EDA. Such written notice must be given on or before the applicable date set forth herein above for such contingency, or Seller's right to terminate this Agreement pursuant to such contingency shall be waived. Upon termination, the Earnest Money shall be returned to the EDA and neither party shall have any further rights or obligations against the other regarding this Agreement or the Property, except for such obligations that survive termination of this Agreement.

6. **Closing**. The closing of the purchase and sale contemplated by this Agreement ("Closing") shall occur no later than October 30, 2025 ("Closing Date"), unless otherwise agreed to by the parties. Seller agrees to deliver legal and actual possession of the Property to EDA on the Closing Date.

6.1. **Seller's Closing Documents and Deliveries**. On the Closing Date, Seller shall execute and/or deliver, as applicable, to EDA the following:

A. **Deed**. A warranty deed conveying title to the Property to EDA, free and clear of all encumbrances, except the Permitted Encumbrances (the "Deed").

B. **Lease Termination**. Documents evidencing termination of existing leases of the Property as between Seller and any tenants.

C. **Assignment and Assumption of Contracts, Permits and Licenses**. Seller shall execute an assignment and assumption of surviving contracts, permits and licenses, warranties, and intangible property conveying to EDA with warranties the surviving contracts, permits and licenses, warranties and intangible property, free and clear of all encumbrances, together with the consent of all parties having the right to consent to such assignment, if necessary.

D. **FIRPTA Affidavit**. An affidavit of Seller certifying that Seller is not a "foreign person", "foreign partnership", foreign trust", "foreign estate" or "disregarded entity" as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

E. **Seller's Affidavit**. A standard owner's affidavit (ALTA form) from Seller which may be reasonably required by Title to issue an owner's policy of title insurance with respect to the Property with the so-called "standard exceptions" deleted (excluding the survey exception).

F. **Settlement Statement**. A settlement statement with respect to this transaction.

G. **"Bring-Down" Certificate**. A certificate dated as of the Closing Date, signed by an authorized officer of Seller, certifying that the representations and warranties of Seller contained in this Agreement are true as of the Closing Date.

H. **General Deliveries**. All other documents reasonably determined by Title to be necessary to transfer the Property to EDA and to evidence that Seller (a) has satisfied all monetary indebtedness with respect thereto, (b) has obtained such termination statements or releases from such secured creditors as may be necessary to ensure that the Property is subject to no monetary liens, (c) has obtained all consents from third parties necessary to effect Seller's performance of the terms of this Agreement, including, without limitation, the consents of all parties holding an interest in the Property, (d) has provided such other documents as are reasonably determined by Title to be necessary to issue policies of title insurance to EDA with respect to the Property with the so-called "standard exceptions" deleted (excluding the survey exception), and (e) has duly authorized the transactions contemplated hereby.

6.2. **EDA Closing Documents and Deliveries**. On the Closing Date, EDA shall execute and/or deliver, as applicable, to Seller the following:

A. **Payment of Purchase Price**. The Purchase Price, in accordance with the terms of Section 1.2.

B. **Settlement Statement**. A settlement statement with respect to this transaction.

C. **General Deliveries**. All other documents reasonably determined by Title to be necessary to evidence that EDA has duly authorized the transactions contemplated hereby and evidence the authority of EDA to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by EDA pursuant to this Agreement, or may be required of EDA under applicable law, including any purchaser's affidavits or revenue or tax certificates or statements.

7. **Prorations**. Seller and EDA agree to the following prorations and allocation of costs regarding this Agreement:

7.1. **Commitment and Closing Fee**. EDA will pay all costs of the title search and preparation of the Commitment with respect to the Property. EDA will pay the cost of all premiums for any title insurance policy it desires with respect to the Property, and the costs of all endorsements. EDA and Seller shall equally share any reasonable closing fees imposed by Title.

7.2. **Transfer Taxes.** Seller shall pay all state deed tax regarding the Deed.

7.3. **Recording Costs**. Seller will pay the cost of recording all documents necessary to place record title to the Property in Seller. EDA will pay all recording costs with respect to the recording of the Deed.

7.4. **Real Estate Taxes and Special Assessments**. General real estate taxes due and payable in the year prior to Closing and all prior years will be paid by Seller. General real estate taxes applicable to any of Seller's Property due and payable in the year of Closing shall be prorated by Seller and EDA as of the Closing. Seller shall pay in full all special assessments (and charges in the nature of or in lieu of such assessments) levied, pending, postponed or deferred with respect to any of Seller's Property as of the Closing Date. EDA shall be responsible for any special assessments that are levied or become pending against the Property after the Closing Date. Notwithstanding anything to the contrary set forth herein, in the event that there are special assessments levied against the Property after the Effective Date, which special assessment relate to EDA's development of the Property, such special assessments shall be assumed by EDA at Closing.

7.5. **Environmental Review**. EDA shall pay all costs and expenses related to the Phase I and/or the Phase II Environmental Review of the Property.

7.6. **Attorneys' Fees**. Seller and EDA shall each pay its own attorneys' fees incurred in connection with this transaction.

7.7. **Survival**. The obligations set forth in this Section 7 survive the Closing.

8. **Survey Examination**. Within twenty (20) days following the Effective Date, EDA shall obtain the following: (i) a commitment for an owner's title insurance policy (ALTA Form 2006) issued by Title for the Property, and copies of all encumbrances described in the commitment (Commitment), which Commitment shall be delivered to counsel for both EDA and Seller concurrently; and, if it desires, (ii) an ALTA-certified survey bearing the legal description of the Property, and showing the area, dimensions and location of the Property (Survey) (the Survey together with the Commitment shall be known as the "Title Evidence") at its sole cost.

8.1. **EDA's Objections**. Within twenty (20) days after EDA's receipt of the last of the Title Evidence, EDA may make written objections ("Objections") to the form or content of the Title Evidence. The Objections may include without limitation, any easements, restrictions or other matters which may interfere with EDA's intended use of the Property or matters which may be revealed by the Survey. Any matters reflected on the Commitment which are not objected to by EDA within such time period shall be deemed to be permitted encumbrances ("Permitted Encumbrances"). EDA shall have the renewed right to object to the Commitment as the same may be revised or endorsed from time to time.

8.2. **Seller's Cure**. Seller shall be allowed twenty (20) days after the receipt of EDA's Objections to cure the same but shall have no obligation to do so. If such cure is not completed within said period, or if Seller elects not to cure such Objections, the sole recourse of EDA shall be to do one of the following:

A. Terminate this Agreement by written notice to Seller, to be issued within ten (10) days after the expiration of Seller's cure period; or.

B. Waive the Objections within ten (10) days after the expiration of the Seller's cure period and proceed to Closing, in which event the Objections shall be deemed Permitted Encumbrances.

If EDA so terminates this Agreement under this Section 8.2, the Earnest Money shall be returned to the EDA and neither Seller nor the EDA shall be liable to the other for any further obligations under this Agreement (except for such obligations as specifically survive termination of this Agreement). If EDA fails to terminate this Agreement under this Section 8.2(A) in the time set forth therein, EDA shall be deemed to have elected to proceed under Section 8.2(B) and waive such Objections, in which the Objections shall be considered Permitted Encumbrances.

9. **Warranties and Representations**.

9.1. **By Seller**. Seller warrants and represents the following to EDA to be true as of the Effective Date, and acknowledges that EDA has relied on such representations and warranties in agreeing to enter into this Agreement:

A. Seller is a Minnesota limited liability company, duly organized and in good standing under the laws of the state of Minnesota and is not in violation of any provisions of its operating agreement.

B. This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms. Seller has been duly formed under the laws of the State of Minnesota and is in good standing under the laws of the jurisdiction in which the Property is located, is duly qualified to transact business in the jurisdiction in which the Property is located, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto have each been duly authorized by all necessary action on the part of Seller and such execution, delivery and performance does and will not conflict with or result in a violation of Seller's organizational agreement or any judgment or order.

C. The execution, delivery and performance by Seller of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Seller, or (b) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Seller is a party or by which it or any of its properties may be bound.

D. To Seller's knowledge, except as contemplated herein, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority, or any other entity, is required on the part of Seller to authorize, or is required in connection with, the execution, delivery and performance of, or the legality, validity, binding effect or enforceability of, this Agreement.

E. To Seller's knowledge, there are no actions, suits or proceedings pending or threatened against or affecting Seller or the Property, before any court or arbitrator, or any governmental department, board, agency or other instrumentality which in any of the foregoing (a) challenges the legality, validity or enforceability of this Agreement, or (b) if determined adversely to Seller, would have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

F. To Seller's knowledge, there are no wells or sewage treatment systems located on any portion of the Property. To Seller's knowledge, there has been no methamphetamine production on or about any portion of the Property. To Seller's knowledge, the sewage generated by the Property, if any, goes to a facility permitted by the Minnesota Pollution Control Agency and there is no "individual sewage treatment system" (as defined in Minnesota Statutes § 115.55, Subd. 1(g)) located on the Property.

G. Seller is not a "foreign person," "foreign corporation," "foreign trust," "foreign estate" or "disregarded entity" as those terms are defined in Section 1445 of the Internal Revenue Code.

H. To Seller's knowledge, except as may be disclosed as part of the Due Diligence Materials, (i) no condition exists on the Property that may support a claim or cause of action under any Environmental Law (as defined below) and there are no Hazardous Substances (as defined below) on the Property, (ii) there has been no release, spill, leak or other contamination or otherwise onto the Property, and (iii) there are no restrictions, clean ups or remediation plans regarding the Property. To Seller's knowledge, except as may be disclosed as part of the Due Diligence Materials, there is no buried waste or debris on any portion of the Property. "Environmental Law" shall mean (a) the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601-9657, as amended, or any similar state law or local ordinance, (b) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401, et seq., (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (f) the Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq., (g) any law or regulation governing aboveground or underground storage tanks, (h) any other federal, state, county, municipal, local or other statute, law, ordinance or regulation, including, without limitation, the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B.01, et seq., (i) all rules or regulations promulgated under any of the foregoing, and (j) any amendments of the foregoing. "Hazardous Substances" shall mean polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, and shall include, without limitation, substances defined as "hazardous substances," "toxic substances," "hazardous waste," "pollutants or contaminants" or similar substances under any Environmental Law.

I. There are no unrecorded contracts of any nature or type relating to, affecting or serving the Property, to which the Seller is a party.

J. There will be no indebtedness attributable to the Property which will remain unpaid after the Closing Date.

The representations, warranties and other provisions of this Section 9.1 shall survive Closing for a period of one (1) year from the Closing Date; provided, however that Seller shall have no liability with respect to a breach of the representations and warranties set forth in this Agreement if EDA has actual knowledge of Seller's breach thereof prior to Closing and EDA consummates the acquisition of the Property as provided herein.

EDA acknowledges and agrees that, except as expressly specified in this Section 9 of this Agreement, Seller has not made, and Seller hereby specifically disclaims, any representation, warranty or covenant of any kind, oral or written, expressed or implied, or rising by operation of law, with respect to the Property, including but not limited to, any warranties or representations as to the habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, physical or environmental condition (as the same is defined by Section 11 of this Agreement), utilities, valuation, governmental approvals, the compliance of the Property with governmental laws, the truth, accuracy or completeness of any information provided by or on behalf of Seller to EDA, or any other matter or item regarding the Property. EDA agrees to accept the Property and acknowledges that the sale of the Property as provided for herein is made by Seller on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis with the exception of the warranties and representations set forth in Section 11.1. The limitations set forth in this paragraph shall survive the Closing and shall not merge in the deed.

9.2. **By EDA**. EDA warrants and represents the following to Seller, and acknowledges that Seller has relied on such representations and warranties in agreeing to enter into this Agreement:

A. EDA has all requisite authority to enter into this Agreement and to perform all of its obligations under this Agreement.

B. The execution, delivery and performance by EDA of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to EDA, (b) violate or contravene any provision of the articles of incorporation or bylaws of EDA, or (c) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which EDA is a party or by which it or any of its properties may be bound.

The representations, warranties and other provisions of this Section 9.2 shall survive Closing; provided, however, EDA shall have no liability with respect to any breach of a particular representation or warranty if Seller shall fail to notify EDA in writing of such breach within one (1) year after the Closing Date.

10. **Additional Obligations of Seller**.

10.1. **Licenses and Permits**. Seller shall transfer to EDA all transferable rights, if any, in any permits or licenses held by Seller with respect to the Property.

10.2. **Building Donation to Little Log House Pioneer Village.** For a period of forty-five (45) days following the Effective Date, Seller shall have the opportunity to receive written acceptance from Little Log House Pioneer Village of Seller's donation of the existing commercial building that is currently situated upon the Property. In the event that the donation is accepted, Seller shall be responsible for filling, grading, and seeding the site to match the existing ground level, subject to approval of the South St. Paul City Engineer.

10.3. **Condition of Property at Closing**. At Closing, Seller shall deliver to EDA exclusive vacant possession of the Property. Seller retains a right to remove any and all personal property and signage from the property at any time on or before the Closing Date. Seller agrees that following the Closing, EDA may dispose of any trash or personal property remaining on the Property, in EDA's sole discretion, and that any such items shall, after Closing, be considered abandoned. Seller shall indemnify EDA for a period of one (1) year with regard to claims of conversion brought with respect to personal property present on the Property at Closing.

10.4. **Further Assurances**. From and after the Closing Date, Seller agrees to execute, acknowledge and deliver to EDA such other documents or instruments of transfer or conveyance as may be reasonably required to carry out its obligations pursuant to this Agreement.

10.5. **Non-Assumption of Contracts or Other Obligations**. The parties understand and agree that EDA is only acquiring certain of Seller's real property assets and that this Agreement and any related agreements shall not be construed to be in any manner whatsoever an assumption by EDA of any agreements, indebtedness, obligations or liabilities of Seller which are owing with respect to the operation of the Property prior to the Closing Date.

10.6. **<u>Mortgages</u>**. On or before the Closing Date, Seller shall satisfy all mortgage and/or lien indebtedness with respect to all or any portion of the Property and shall obtain recordable releases of the Property from any and all such mortgages or other liens affecting all or any portion of the Property. Notwithstanding the foregoing, Seller shall not be obligated to satisfy any liens that result from the EDA's Investigations.

10.7. **<u>Marketing</u>.** At all times prior to the Closing Date, Seller shall not negotiate in any manner for the sale or transfer of the Property with any third party.

11. **<u>Environmental Matters</u>**.

11.1. **<u>Definitions</u>**. For purposes of this Agreement,

A. **"Hazardous Substances"** shall include, without limitation, polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, and shall include, without limitation, substances defined as "hazardous substances", "toxic substances", "hazardous waste", "pollutants or contaminants" or similar substances under any Environmental Law, as hereinafter defined.

B. **"Environmental Law"** shall mean (a) the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601-9657, as amended, or any similar state law or local ordinance, (b) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401, et seq., (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (f) the Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq., (g) any law or regulation governing aboveground or underground storage tanks, (h) any other federal, state, county, municipal, local or other statute, law, ordinance or regulation, including, without limitation, the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B.01, et seq., (i) all rules or regulations promulgated under any of the foregoing, and (j) any amendments of the foregoing.

C. **"Seller-Caused Environmental Conditions"** shall mean any release or threatened release of any Hazardous Substances into the drainage systems, soils, groundwater, waters or atmosphere, which release is the result of the control, use, occupancy and/or operation of the Property by the Seller or any employee, officer, assignee, lessee, affiliate, or other agent of the Seller prior to the Closing Date.

11.2. **Reporting Requirements.** Seller and EDA agree to comply with all reporting requirements set out in any Environmental Law.

11.3. **Survival**. The obligations set forth in this Section 11 shall survive Closing.

12. **Broker**. It is acknowledged that there is not a broker for EDA. Seller has a broker and all fees to the broker will be paid by Seller.

13. **Notice**. Any notice to be given by one party hereto shall be personally delivered (including messenger delivery) or be sent by registered or certified mail, or by a nationally recognized overnight courier which issues a receipt, in each case postage prepaid, to the other party at the addresses in this Section (or to such other address as may be designated by notice given pursuant to this Section), and shall be deemed given upon personal delivery, three (3) days after the date postmarked or one (1) business day after delivery to such overnight courier.

| | |
|---|---|
| If to EDA: | EDA of South St. Paul<br>Attn: Executive Director<br>125 Third Avenue North<br>South St. Paul, MN 55075 |
| with a copy to: | Korine L. Land<br>LeVander, Gillen & Miller, P.A.<br>1305 Corporate Center Drive, Suite 300<br>Eagan, MN 55121 |
| If to Seller: | Petroleum Services USA, LLC<br>Attn: David Berg<br>417 Concord Street North<br>South St. Paul, MN 55075 |

14. **Default; Remedies**. If either Seller or EDA fails to perform any of its obligations under this Agreement in accordance with its terms, and such failing party does not cure such failure within thirty (30) days after written notice thereof from the other party (provided that no notice or cure period shall be required for obligations to be performed at Closing), then the other party shall have the right to terminate this Agreement by giving the failing party written notice of such election. In the case of any default by EDA, Seller's sole and exclusive remedy shall be the termination of this Agreement as provided above and, upon any such termination, the Earnest Money shall be forfeited to Seller as the full and final liquidated damages, with the exception of any liens arising out of EDA's Investigations, the obligations and liability for which shall survive the termination of this Agreement and the release of the Earnest Money to Seller. In the case of any default by Seller, EDA's sole and exclusive remedy shall be to terminate this Agreement, in which case the Earnest

Money deposit shall be returned to EDA. In no event shall EDA be entitled to record a notice of Lis Pendens against the Property.

15. **Cumulative Rights**. No right or remedy conferred or reserved to Seller or EDA is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative in and in addition to every other right or remedy existing at law, in equity or by statute, now or hereafter.

16. **Entire Agreement; Modification**. This written Agreement constitutes the complete agreement between the parties with respect to this transaction and supersedes any prior oral or written agreements between the parties regarding this transaction. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in writing executed by the parties, except as specifically set forth herein with regard to items waived as a result of passage of time.

17. **Binding Effect; Survival**. This Agreement binds and benefits the parties and their respective successors and assigns. All representations and warranties, and indemnification obligations of the parties hereto shall survive the Closing.

18. **EDA's Assignment**. EDA may assign this Agreement without the prior written consent of the Seller (but with written notice to Seller). No assignment shall relieve EDA from its obligations under this Agreement.

19. **Governing Law**. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, County of Dakota.

20. **Rules of Interpretation**. The words "herein" and "hereof" and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than any particular section or subdivision hereof. References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed.

21. **Titles of Sections**. Any titles of the sections, or any subsections, of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

22. **Counterparts; Facsimiles**. This Agreement may be executed in any number of counterparts, and all of the signatures to this Agreement taken together shall constitute one and the same agreement, and any of the parties hereto may execute such agreement by signing any such counterpart. Facsimile or "PDF" signatures on this Agreement shall be treated as originals until the actual original signatures are obtained.

23. **Represented by Counsel**. Each party has been represented and advised by counsel in the transaction contemplated hereby.

24. **Time of the Essence**. Time is of the essence of this Agreement.

**[remainder of page intentionally left blank]**

**IN AGREEMENT**, the parties hereto have hereunto set their hands as of the date hereinbefore first written.

**SOUTH ST. PAUL ECONOMIC DEVELOPMENT AUTHORITY**

By: ____________________________
James P. Francis, President

By: ____________________________
Ryan Garcia, Executive Director

**PETROLEUM SERVICES USA, LLC**

By: ____________________________

David Berg, Its ________________

## EXHIBIT A

## LEGAL DESCRIPTION OF PROPERTY

Real property in Dakota County, Minnesota, legally described as follows:

Tract A:

Lots 1, 2, 3 and 4, Block 2, Cremer's Addition to South St. Paul, Dakota County, Minnesota, except the following described parcels:

That part of Concord Street originally platted in the City of South St. Paul adjoining and Northeasterly of Lot 1, Block 2, Cremer's Addition to South St. Paul, according to the recorded plat thereof, which lies Southeasterly of the Southeasterly line of Wentworth Avenue and Southwesterly of the Southwesterly line of Concord Street, described as follows: Beginning at a point on the Northwesterly line of said Lot 1, a distance of 11 feet Southwesterly of the Northeast corner, thence Northeasterly along the Northwesterly line of said Lot 1, projected a distance of 30 feet, thence deflect to the right 109 degrees 59 minutes 49 seconds a distance of 15 feet, thence deflect to the right 99 degrees 59 minutes 49 seconds a distance of 28.72 feet to the point of beginning and there terminating.

AND

That part of Lots 1, 20, 3 and 4, Block 2, Cremer's Addition to South St. Paul according to the recorded plat thereof, described as follows: Beginning at the Northwest corner of said Block 2, thence Southerly along the West line of said Block 2 a distance of 89 feet to the Southwest corner of said Lot 4, thence East along the Southerly line of said Lot 4 a distance of 35.22 feet, thence Northwesterly a distance of 93.19 feet to a point on the Northwesterly line of said Lot 1 located 11.8 feet Easterly of the Northwest corner, thence Westerly along the Northwesterly line of said Lot 1 a distance of 11.3 feet to the point of beginning and there terminating.

Tract B:

That part of Lot 5, Block 2, Cremer's Addition to South St. Paul, according to the plat of file or of record in the Office of the County Recorder in and for Dakota County, Minnesota described as follows: Beginning at the Northeast corner of said Lot 5; thence Southerly along the East line of said Lot 5, a distance of 25 feet, thence Westerly along the South line of said Lot 5, a distance of 58.27 feet; thence Northwesterly 78 degrees 18 minutes 06 seconds to the North line of said Lot 5, thence Easterly along the North line of said Lot 5 to a point of beginning and there terminating.

That part of Concord Street as originally platted in the City of South St. Paul adjoining and Northeasterly of Lots 1, 2, 3, 4, 5, Block 2, Cremer's Addition to South St. Paul, according to the plate thereof on file and of record in the County Recorder in and for Dakota County, Minnesota, described as follows: Bounded on the East by the Westerly right of way line of newly constructed Trunk Highway 56; bounded on the South by the Easterly extension of the South line of said Lot 5, bounded on the West by East line of said Block 2, and bounded on the North by the following described line: Beginning at a point of Northwesterly line of said Lot 1, 11 feet Southwesterly of the Northeast corner, thence deflecting from the Northwesterly line Southeasterly 29 degrees 29 minutes 49 seconds to the Westerly right of way line of newly constructed Trunk Highway 56 and there terminating.

PIDs:
36-18600-02-041; Abstract Property
36-18600-02-103; Abstract Property

*[Title Commitment legal description to govern]*