

City of Scottsbluff, Nebraska

Monday, May 2, 2016

Regular Meeting

Item Reports8

Council to consider the agreement to purchase land owned by Nebraska Public Power District for the development of the solar project and authorize the Mayor to execute the agreement.

Staff Contact: Nathan Johnson, City Manager

AGREEMENT FOR SALE OF REAL ESTATE

THIS AGREEMENT FOR SALE OF REAL ESTATE, hereinafter referred to as Agreement, is made by and between NEBRASKA PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska and the successor in interest to Consumers Public Power District, hereinafter referred to as SELLER, and the City of Scottsbluff, Nebraska, a municipal corporation, hereinafter referred to as BUYER.

RECITALS:

SELLER is the owner of a tract of land, located in the City of Scottsbluff in Scotts Bluff County, Nebraska, and described as follows:

A TRACT OF LAND WHICH IS APPROXIMATELY 0.34 ACRES LOCATED IN PART OF BLK 1, SECOND POWER STATION ADD, IN SECTION 26, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M. IN SCOTTS BLUFF COUNTY NEBRASKA.

(NOTE: Final acreage and legal description of the property being purchased will be determined by a survey to be completed at a later date.)

SELLER has agreed to sell the real estate to BUYER, and BUYER has agreed to purchase the same from SELLER, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and the Parties intending to be legally bound hereby, it is agreed between the Parties as follows:

1. CONSIDERATION: BUYER shall pay SELLER as full consideration an amount to be negotiated and agreed upon by both parties before this Agreement is executed by the parties.

2. CLOSING: Closing shall be at such time and place as the Parties shall mutually agree upon. The closing is subject to the approval of the sale of the real estate to BUYER by SELLER'S Board of Directors.

3. TAXES: It is understood by the Parties that said property has not been subject to taxation and there are no taxes on said property to be paid by SELLER.

4. WARRANTIES: BUYER acknowledges that BUYER has examined and inspected the premises, and that BUYER is purchasing the same subject to BUYER'S own inspection and not by reason of any representation of SELLER. BUYER is buying the premises on an AS IS, WHERE IS basis, WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, OF ANY KIND WHATSOEVER BY SELLER.

5. POSSESSION: SELLER shall give BUYER quiet and peaceable possession of the premises on the date of closing. All risk of loss or damage to the premises being sold

hereunder shall remain on SELLER until the time of closing, and shall pass to BUYER at the time of closing.

6. ASSIGNMENT: BUYER shall not have the right to assign, transfer or sell BUYER'S interest in this Agreement without first obtaining the consent, in writing, of SELLER.

7. TITLE: BUYER shall obtain a policy of the title insurance on the premises and the cost of such policy shall be divided equally between BUYER and SELLER. Such title insurance commitment shall show good and merchantable title in SELLER, free and clear of all liens and encumbrances, subject, however, to public highways, easements of record, apparent easements, and all governmental rules and regulations.

Written notice of any easement, restriction or other matter affecting title to the premises that is unacceptable to BUYER shall be delivered to SELLER within two weeks from receipt of the title commitment or updated title commitment. Seller shall have a reasonable period, not exceeding thirty days, to cure any easement, restriction, or other matter unacceptable to BUYER. In the event SELLER elects not to cure any easement, restriction, or other matter unacceptable to BUYER, BUYER may declare this Agreement null and void.

8. DEED: SELLER shall prepare and execute a Corporation Quitclaim Deed of conveyance to BUYER, free and clear of all encumbrances, subject, however, to public highways, easements of record, apparent easements, and all governmental rules and regulations, and deliver the same to BUYER on the date of closing upon payment of the purchase price in a simultaneous transaction.

9. SELLER'S RIGHT TO REPURCHASE LAND: Seller understands that this property is being purchased by the City of Scottsbluff so that the City of Scottsbluff can work with Scottsbluff Solar LLC to build a solar array in the City of Scottsbluff, in Scotts Bluff County, Nebraska. In the event that the solar array project is not developed by the City of Scottsbluff and Scottsbluff Solar LLC, and/or the City of Scottsbluff no longer needs the above-described real estate for a solar array, the City of Scottsbluff agrees to take all reasonable steps to restore the land, as nearly as possible, to the condition the land was in prior to the City performing any grading or alterations to the said tract of land. The BUYER also agrees that it will sell the above described land, and that Seller will be given the first right of refusal to purchase the land from the BUYER at the same price that BUYER purchased the land from Seller under the terms of this Agreement.

10. COSTS: BUYER and SELLER shall pay their own attorney fees incurred in this sale.

11. SURVEY: The real estate sold hereby will be surveyed and filed by NPPD at a later date.

12. ENVIRONMENTAL ASSESSMENT: BUYER agrees and understands that this property is being purchased "AS IS", and BUYER acquires from SELLER all action, rights of action and/or cause of action and assumes all liabilities incidental to and pertaining to the property which is the subject matter of this Agreement.

13. NOTICE: All notices required herein shall be in writing, and shall be mailed to the following addresses:

SELLER: NEBRASKA PUBLIC POWER DISTRICT
Attn: Ron Starzec
PO Box 499
Columbus, NE 68602-0499

BUYER: CITY OF SCOTTSBLUFF
Attn: Cindy Dickenson/City Clerk
2525 Circle Drive
Scottsbluff, Nebraska 69361

With respect to all notices mailed, the date of postmark shall control.

14. DEFAULT: In the event either Party should default under the terms and conditions to be performed by that Party pursuant to this Agreement, the other Party shall have such rights and remedies as are allowed by law, including the rights of specific performance. The election or forfeiture of any one remedy shall not bar the election or cause the forfeiture of any other remedy.

15. SURVIVAL: All terms, conditions, representations and warranties of SELLER and BUYER in this Agreement shall survive the date of closing.

16. SEVERABILITY: In the event any provision of this Agreement is determined to be invalid or unenforceable for any reason, such determination shall not affect the remainder of this Agreement.

17. BINDER: This Agreement shall be binding upon the successors, assigns and legal representatives of the Parties hereto.

18. ENTIRETY: This Agreement constitutes the entire Agreement between the Parties, and any other Agreements between the Parties, unless reduced to writing and executed by the Parties, shall be null and void.

IN WITNESS WHEREOF, the Parties have set their hands to this Agreement the dates set out below.

SELLER:
NEBRASKA PUBLIC POWER DISTRICT

By: _____
Alan J. Beiermann

Title: Land Management Manager

Date: _____

BUYER:
CITY OF SCOTTSBLUFF, NEBRASKA

By: _____
Randy Meininger

Title: Mayor

Date: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF PLATTE)

Before me, a notary public qualified in said county, personally came Alan J. Beiermann, Land Management Manager, of Nebraska Public Power District, a corporation, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal on _____, 2016.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF SCOTTS BLUFF)

Before me, a notary public qualified in said county, personally came Randy Meininger, Mayor of the City of Scottsbluff, Nebraska, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution to be his voluntary act and deed.

Witness my hand and notarial seal on _____, 2016.

Notary Public