

City of Scottsbluff, Nebraska

Monday, July 17, 2017

Regular Meeting

Item Resolut.2

Council to consider the contract selling approximately 365.34 acres of city-owned property to Croell, Inc., an Iowa Corporation in the amount of \$548,010.00 and authorize the Mayor to execute the contract.

Staff Contact: Nathan Johnson, City Manager

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") is made on _____ between Croell, Inc., an Iowa Corporation ("Buyer") and the City of Scottsbluff, Nebraska, a Municipal Corporation ("Seller").

1. Description:

On the terms and subject to the conditions set forth in this Agreement, the Seller shall sell to the Buyer real estate described as follows:

PT NE, PT SE, PT SW (N of Canal), 34-22-54 in Scotts Bluff County, Nebraska containing approximately 365.34 acres (Scotts Bluff County Parcel ID 01003131)

subject to easements, restrictions, reservations and rights-of-way of record ("Real Estate").

(The exact legal description of the Real Estate will be obtained from the title commitment and used in the warranty deed.)

2. Purchase Price:

The purchase price for the Real Estate shall be \$548,010.00 payable by Buyer to Seller in cash or certified funds at closing.

3. Closing and Possession:

The closing shall take place on or before October 1, 2017. Closing shall be at a place in Scotts Bluff County and at a time as mutually agreed upon by the parties. At the closing, the Seller shall deliver to the Buyer a warranty deed conveying the Real Estate to Buyer free and clear of all liens and encumbrances, excepting easements, restrictions, reservations and rights-of-way of record.

4. Evidence of Title:

Within 20 days after the execution of this Agreement, the Seller shall furnish to the Buyer a title insurance commitment. If the title insurance commitment shows any title defect or other condition (which can include easements, restrictions, reservations, and rights-of-way) unsatisfactory to Buyer, or any other unsatisfactory title defect or condition is discovered, then Buyer shall notify Seller and Seller, at Seller's expense, shall have a reasonable time to correct any title defects and/or unsatisfactory conditions and the closing shall be delayed accordingly. If it is impossible for Seller to perfect title or correct or cure unsatisfactory conditions, or if the defects and unsatisfactory conditions which exist will require court action or an unreasonable expense or time to cure, then Buyer and Seller shall each have the right to rescind this Agreement in writing unless Buyer waives the defects and unsatisfactory conditions and elects to close, accepting the Real Estate subject to the defects and unsatisfactory conditions.

5. Taxes:

Seller shall be responsible for and shall pay real estate taxes and assessments levied against the Real Estate for all years prior to the date of closing (if any). Real estate taxes for the year of closing shall be prorated to the date of closing based on the most recent assessment available. Seller shall be responsible for that portion of the real estate taxes for the year of closing attributable to that period of time prior to closing (if any). The real estate taxes for the remainder of the year of closing and all subsequent years shall be paid for by Buyer.

6. Seller's Representations:

Seller represents to Buyer that to the best of Seller's knowledge:

- a. There are no latent defects in the Real Estate.
- b. No sources of contamination exist on or adjacent to the Real Estate which would obligate Buyer to clean up expenses under Federal or State environmental laws and regulation, and Seller has received no notice of the existence of such contamination. In addition, Seller has received no notice of any action or proposed action by governmental authorities concerning contamination of the Real Estate.
- c. Seller has not done or performed, and until conveyance of the Real Estate in accordance with the terms of this Agreement, Seller will not intentionally do or perform, any act which would in any way interfere with or adversely affect the ability of Seller to complete the conveyance required under this Agreement.
- d. Seller has received no notices and no notices have been issued from any governmental authority, indicating that the real estate is in violation of any zoning, building, environmental, fire or health codes or similar statutes or that the current operation of the Real Estate does not comply with all applicable governmental laws, rules, and regulations.
- e. There is no actual or threatened suit or claim resulting from any controversy which may adversely affect the Real Estate or its ownership.
- f. No undertaking by Seller under this Agreement will constitute a default by Seller under agreements to which Seller is a party. No other party has an option to purchase the Real Estate and Seller is not obligated to give any other party a right of first refusal prior to selling the Real Estate to Buyer.
- g. There are no claims for construction liens or any unpaid amounts for labor or material which would give rise to construction liens on the Real Estate.
- h. There are no current leases on the Real Estate. Seller, without Buyer's written consent, from the date hereof until the closing date, will not execute any leases in connection with the Real Estate.
- i. There are no existing oil, gas, mineral, sand, gravel or similar leases on the Real Estate and Seller is not reserving any rights to oil, gas, minerals, sand, gravel or similar material on the Real Estate.

7. Buyer's Representations:

Buyer represents to Seller that:

- a. Buyer is a Corporation duly organized, validly existing in good standing in the State of Iowa and authorized to do business in the State of Nebraska and Buyer has all requisite power and authority to own real estate and operate its property and business in Nebraska and to perform its obligations under this Agreement.
- b. This Agreement is a valid and binding obligation of the Buyer and is enforceable against the Buyer in accordance with its terms.

8. Conditions of Closing:

- a. Buyer's obligation to close under this Agreement shall be subject to the following conditions, any of which may be waived by Buyer.

- (i) Seller's representations and covenants in this Agreement shall be true in all material respects through the date of closing and Seller shall have performed its obligations under this Agreement.

- (ii) The Real Estate shall be properly zoned, or Buyer shall obtain, to Buyer's satisfaction, a conditional use permit from all appropriate government authorities, for Buyer's intended use of the Real Estate to include an asphalt plant and concrete plant, mining of sand, gravel, and other aggregate material, crushing and screening of such aggregate material, pumping and dredging, other uses ancillary to the foregoing uses, and buildings suitable for Buyer's business.

- (iii) Buyer shall obtain all necessary permits and approvals from all appropriate government authorities for Buyer's intended use of the Real Estate including without limitation a permit for pumping and dredging activities.

- (iv) The Real Estate shall contain adequate sand, gravel, and other aggregate material for Buyer's intended use of the Real Estate, which shall be determined in Buyer's sole discretion. Buyer shall have up to and including (60) days (the "Inspection Period") following the date of this Agreement to conduct tests upon, within and under and otherwise to inspect the Real Estate, at Buyer's expense, for any condition or any reason whatsoever. Such inspections shall reveal the Real Estate, including without limitation the soils and all other aspects of the Real Estate, to be acceptable to Buyer, in Buyer's sole and uncontrolled discretion, for Buyer's intended uses of the Real Estate. Seller agrees that Buyer and Buyer's authorized representatives shall have access to the Real Estate during the Inspection Period, upon reasonable prior notice to Seller, to make such tests, assessments, surveys, studies and investigations as Buyer desires. Such inspections may include, but shall not be limited to soils and/or groundwater tests and analyses and testing to determine the presence, if any, of Hazardous Substances (as hereinafter defined) located in, on or about the Real Estate (except in de minimis amounts handled and disposed of in accordance with all applicable laws). The term "Hazardous Substances" shall mean any waste, substance, constituent or material identified as hazardous, radioactive, dangerous or toxic by any office, agency, department, commission, board, bureau or instrumentality of the United States of America, the State

of Nebraska having or exercising jurisdiction over such waste, substance, or material including, without limitation, (i) those substances included within the definitions of "Hazardous Substances," "Hazardous Materials," "Regulated Substances," "Toxic Substances" or "Solid Waste" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 USC Sections 9601 et seq., the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 USC Sections 6801 et seq., and the Hazardous Materials Transportation Act, 49 USC Sections 1801 et seq., and in the regulations promulgated pursuant to said laws; (ii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101, as amended) or by the Environmental Protection Agency (or any successor agency) as "Hazardous Substances" (40 CFR Part 302, as amended); (iii) any material, waste or substance which is (a) petroleum, (b) asbestos, (c) polychlorinated biphenyls, (d) designated as a "Hazardous Substance" pursuant to Section 311 of the Clean Water Act, as amended, 33 USC 1251 et seq., (33 USC 1321) or listed pursuant to Section 307 of the Clean Water Act (33 USC 1317), (e) Flammable Explosive, or (f) Radioactive materials; and (g) such other substances, materials and waste which are or become regulated under applicable local, state or federal law, or the United States of America government, or which are classified as hazardous or toxic under federal, state or local laws and regulations. If the Buyer is not satisfied with the condition of the Real Estate, then Seller shall have the option, upon written notice delivered to Seller within the Inspection Period, to declare this entire transaction to be null and void and terminate this Agreement. Buyer shall be responsible for the expense of returning the Real Estate to its condition prior to Buyer's inspections.

(v) Buyer shall obtain approval from all appropriate government authorities of a plat of the Real Estate, proposed by Buyer, detailing rights of way, easements, areas to be improved, and areas to be mined.

(vi) Buyer and Seller shall have agreed in writing to the division of costs between Buyer and Seller for providing 3 phase electric power to the Real Estate.

(vii) Seller shall pass an ordinance, provide notice, and publish terms of this Agreement in accordance with NEB. REV. STAT. § 16-202 and Seller shall not have received a legitimate remonstrance petition against the sale which is sufficient to stop the sale pursuant to NEB. REV. STAT. § 16-202.

If any of the conditions in this Section 8(a) are not met prior to closing, then Buyer may, at Buyer's option, rescind this Agreement in a writing delivered to Seller, in which case this Agreement shall be null and void. Buyer may waive any of these conditions and proceed to close.

b. Seller's obligation to close under this Agreement shall be subject to the following conditions, any of which may be waived by Seller (if legally permissible).

(i) Buyer's representations and covenants in this Agreement shall be true in all material respects through the date of closing and Buyer shall have performed its obligations under this Agreement.

(ii) Seller shall pass an ordinance, provide notice, and publish terms of this Agreement in accordance with NEB. REV. STAT. § 16-202 and Seller shall not have

received a legitimate remonstrance petition against the sale which is sufficient to stop the sale pursuant to NEB. REV. STAT. § 16-202.

If any of the conditions in this Section 8(b) are not met prior to closing, then Seller may, at Seller's option, rescind this Agreement in a writing delivered to Buyer, in which case this Agreement shall be null and void. Seller may waive any of these conditions and proceed to close.

c. Closing may be delayed for a reasonable time if necessary for any of the conditions set forth in this Section 8 to be satisfied.

9. Inspection and Disclosures:

Buyer has had and prior to closing will have opportunities to inspect the Real Estate and is entering into this Agreement and will close based on those inspection and not any representation or warranties, express or implied, made by Seller, except those specifically set forth in this Agreement. At closing, Buyer will accept the Real Estate in an "AS IS" condition, with all faults.

10. Expenses of Sale:

The fees associated with any loan obtained by Buyer, including the cost of a lender's policy, shall be paid for by Buyer. The cost of the owner's title insurance coverage and closing costs shall be divided equally between the parties. Buyer shall pay for the cost of recording the Warranty Deed.

11. Damages:

In the event the parties fail to close this Agreement as agreed, because of default by either Buyer or Seller, the non-defaulting party shall have those remedies available to it in either equity, law, or otherwise, including the right to enforce this Agreement by an action for specific performance.

12. No Brokers:

Neither Seller nor Buyer have entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of the other party to pay any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.

13. Notices:

Any notices or other communication required under this Agreement shall be in writing and shall either be delivered in person or sent by certified or registered mail, return receipt requested, or by recognized overnight delivery service, to the addresses set out below, or to such other address as the Seller or the Buyer may designate, from time to time, by written notice to the other. A notice shall be deemed effective upon receipt.

- a. If to the Seller: City of Scottsbluff
Attn: City Manager
2525 Circle Drive
Scottsbluff, NE 69361

- b. If to the Buyer: Croell, Inc.
Attn: Kurt Croell
2010 Kenwood Avenue
PO Box 430
New Hampton, IA 50659

14. General Provisions:

- a. This Agreement shall not be assignable by either party without the consent of the other party.
- b. As used in this Agreement, a “reasonable time” shall not exceed 90 days without mutual agreement of both parties.
- c. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. Provided, no assignment of all or any portion of this Agreement shall relieve any party of its obligations under this Agreement.
- d. No waiver of any breach of any provision of this Agreement will be deemed a waiver of any other breach of this Agreement. No extension of time for performance of any act will be deemed an extension of the time for performance of any other act.
- e. All covenants contained in this Agreement or in any certificate, document or other instrument delivered pursuant to this Agreement or in connection with the closing shall be deemed a covenant, representation and warranty. All covenants, representations and warranties shall survive the closing and recording of the deed or deeds from the Seller to the Buyer. All such covenants, representations and warranties shall be true, bona fide and accurate as of the date of closing, notwithstanding that any of said covenants, representations and warranties by the language used in this Agreement may refer to a state of facts as of a date prior to the closing and not as of the closing. **Each party (the “Indemnitor”) agrees to indemnify and hold the other party (the “Indemnitee”) harmless from any breach by the Indemnitor of covenants, representations and warranties contained herein, including, but not limited to, all claims, demands, actions, investigations, proceedings, judgments or loss of any nature, including costs, expenses and attorney’s fees incurred by the Indemnitee.**
- f. This Agreement may be executed in one or more counterparts, each of which may be considered as an original.
- g. This Agreement shall be construed according to the laws of Nebraska.
- h. This Agreement contains the entire agreement of the parties. This Agreement may be amended only in writing signed by all parties.
- i. Each party, without further consideration, promises to execute and deliver such other documents and take such other actions as may be necessary to consummate the intent and purpose of this Agreement, provided that this Agreement shall be effective regardless of whether any additional documents are executed or any further actions are taken.
- j. If for any reason, whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable or invalid as applied to any particular case or in all cases, such

circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any other provision of this Agreement inoperative, unenforceable or invalid.

k. The provisions, covenants, representations, and warranties of this Agreement shall survive the closing and shall not be merged into the deed transferred pursuant hereto.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

CROELL, INC., an Iowa Corporation

By: _____
Kurt Croell, President

CITY OF SCOTTSBLUFF, NEBRASKA, a
Municipal Corporation

By _____
Randy Meininger, Mayor

Attest: _____
Cindy Dickinson, City Clerk

State of _____, County of _____:

This Agreement was acknowledged before me on _____, 2017, by Kurt Croell,
President of Croell, Inc., an Iowa Corporation, for and on behalf of the corporation, Buyer.

Notary Public

State of _____, County of _____:

This Agreement was acknowledged before me on _____, 2017, by Randy
Meininger, Mayor of the City of Scottbluff, Nebraska, Seller.

Notary Public