

City of Scottsbluff, Nebraska

Monday, July 20, 2020

Regular Meeting

Item Reports5

Council to discuss and consider action on an offer to purchase land for purposes of continuing the site evaluation for a possible landfill.

Staff Contact: Rick Kuckkahn, Interim City Manager

**SOLID WASTE DISPOSAL SITE EXPLORATION AGREEMENT
AND OPTION TO PURCHASE**

This Solid Waste Disposal Site Exploration Agreement and Option to Purchase (“Agreement”) is made and entered into this ____ day of ____, 2019~~20~~, by and between the City of Gering, Nebraska and the City of Scottsbluff, Nebraska (hereinafter “City”), ~~a~~both political subdivisions of the State of Nebraska with ~~its~~their principle office located at _____ AND _____, whose address is _____ (herein after “Landowner”). The term “Parties” as used herein refers to the City and the Landowner collectively.

WITNESSETH:

WHEREAS, City desires to enter onto the Property, described below, owned by Landowner, for the purposes of evaluating said Property for suitability as a new solid waste disposal site for the City ~~and~~ _____ (“desired use”); and

WHEREAS, if City concludes that the Property meets or exceeds the standards for solid waste disposal sites and is suitable for such use, City desires an option to purchase all or a portion of the described Property to locate a new solid waste disposal site thereon; and

WHEREAS, Landowner desires to enter into this ~~a~~Agreement and allow City to take such actions as more specifically described below to evaluate the Property for the desired use, and the Landowner desires to sell all or a portion of the Property described below for City’s desired use; and

NOW THEREFORE, in consideration of the above and mutual covenants and agreements contained herein, it is hereby agreed by and between the Parties as follows:

**ARTICLE 1
The Property**

The Property subject to this Agreement is described as follows:

(insert legal description)

(“Property”)

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**ARTICLE 2
Access to the Property and Activities on the Property**

Landowner hereby agrees that City, its staff, representatives, employees, designees, and contractors shall have full and unrestricted access to the Property for a period of one (1) year, beginning the date this Agreement is entered, to: (A.) conduct geotechnical investigations that may include drilling and constructing up to eight (8) ground water monitoring wells and twelve (12) soil borings; (B.) Conduct surveys to create a topographic site survey conducted by a Nebraska licensed surveyor which may utilize an unmanned aerial vehicle (“UAV”) if appropriate; (C.) Conduct a cultural resource survey to determine areas of historical significance;

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and (D.) Conduct a threatened and endangered species ("T&E") survey, including both flora and fauna, and mapping of critical habitat and vegetation types if necessary. Limited ATV use is allowed on the Property to complete the stated purposes.~~may be required.~~

ARTICLE 3

Option to Purchase

Landowner agrees and acknowledges that City shall have a sole and exclusive option and right to purchase the entire Property or parts of the Property~~such tracts of land~~ as are necessary to accomplish its desired use. This option may be exercised at any time prior to the expiration of the one (1) year period of this Agreement.

ARTICLE 4

Compensation

City agrees to pay Landowner \$_____ to enter the Property and conduct and complete its evaluations to determine the suitability of the Property for the desired use. Payment to enter and access to the Property and conduct the evaluations has been made and is hereby acknowledged. Should the Property prove suitable for the desired use and City ~~wishes~~determines to exercise the option to purchase provision of this Agreement (Article 3), City shall pay \$_____ per acre of the Property~~land~~ purchased for the location of a new solid waste disposal site. To determine the number of acres to be purchased, City shall pay all survey costs and expenses. Payment for the purchase of the ~~lands~~Property under the option to purchase shall be made at closing.

ARTICLE 5

Title, Conveyance, Insurance, and Closing Costs

If City ~~desires~~decides to exercise its option to purchase, the conveyance of title by Landowner shall be by Warranty Deed to City. The Warranty Deed shall include satisfactory representations and warranties of ~~sound~~marketable-title. City shall initiate the request for title insurance. The costs of title insurance shall be paid by City. If there are title defects, City may either (a) if defects cannot be cured by designated closing date, cancel this Agreement; (b) accept title as is, or (c) if defects are such that they can be remedied within a reasonable time, permit Landowner time to cure defects at City's expense.

The recording fees shall be the responsibility of City and the documentary stamp tax for the filing shall be the responsibility of Landowner.

ARTICLE 6

Taxes

The Landowner shall pay all real estate taxes levied against the Property for all years prior to the year of Closing along with all special assessments levied on the Property in full. The real estate taxes for the year of the Closing shall be prorated between the parties to the Closing Date based on the most recent tax statement available. The Landowner has not received any

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~~notice of any special assessments which affect the Property and to the Landowner's knowledge, no such assessments are pending or contemplated. All taxes and general or special assessments levied or assessed against the Property, year 2019 and prior years, shall be paid by Landowner. All taxes and general or special assessments levied or assessed against the Property for the year 2019 shall be prorated to the date of Closing.~~

ARTICLE 7

Closing Date

The Closing Date of the sale shall be such date as mutually agreed between City and Landowner, but shall be within 30 days of the date the Landowner is sent written notification of the City's decision to exercise the option to purchase.

ARTICLE 8

Miscellaneous

8.1 **Interpretation.** The terms and conditions hereof represent the results of bargaining and negotiations between the Parties, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and conditions hereof shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties hereby expressly waive and disclaim, in connection with interpretation and construction hereof, any rule of law or procedure requiring otherwise, specifically including, but not limited to, any rule of law to the effect that ambiguous or conflicting terms or conditions contained herein shall be interpreted or construed against the drafting party.

8.2 **Governing Law.** This Agreement shall be deemed to have been made and executed in the State of Nebraska and the validity, construction, interpretation, effect and enforcement thereof shall be governed by the laws of the State of Nebraska.

8.3 **Severability.** The various terms, provisions, and covenants herein contained shall be deemed to be separable and severable, and the invalidity or unenforceability of any of them shall in no manner affect or impair the validity or enforceability of the remainder thereof.

8.4 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall in such event be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree to accept signatures transmitted by facsimile except on documents to be made a part of the public record.

8.5 **Assignment.** This Agreement shall not be assigned by City without the written consent of Landowner and any attempted assignment without such consent shall be void.

8.6 **Captions.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

8.7 **Survival.** Subject to all of the terms, covenants, conditions, representations, warranties, indemnities and agreements contained in this Agreement shall survive and continue in force and effect and shall be enforceable for a period of ten (10) months after the closing.

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8.8 **Entire Agreement and Amendments.** This Agreement, the exhibits and schedules attached hereto and other documents delivered pursuant to the provisions hereof, set forth the entire agreement between Landowner and City with respect to the transactions contemplated hereby or related thereto, superseding in all respects any and all prior oral or written agreements or understandings relating thereto. This Agreement shall be amended or modified only by a written instrument signed by both Landowner and City.

IN WITNESS WHEREOF, Landowner and City have caused this Agreement to be executed by duly authorized representatives as of the date first set forth above.

CITY OF GERING, NEBRASKA

_____,
LANDOWNER

By: _____ By: _____

Name: _____ Name: _____

Its: _____ Its: _____

CITY OF SCOTTSBLUFF, NEBRASKA

By: _____

Name: _____

Its: _____

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