

City of Scottsbluff, Nebraska

Monday, December 21, 2020

Regular Meeting

Item Reports8

Council to receive an update from the City of Gering regarding a new solid waste disposal site and discuss and consider action on the Solid Waste Disposal Site Exploration Agreement and Option to Purchase and authorize the Mayor to sign the Agreement.

Staff Contact: Rick Kuckkahn, 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 December, 2020, by and between the City of Gering, Nebraska and the City of Scottsbluff, Nebraska (hereinafter "City"), both political subdivisions of the State of Nebraska with its principal office located at 1025 P Street, P.O. Box 687, Gering, NE 69341 and 2525 Circle Drive, Scottsbluff, NE 69361 and F X Land Company, A Nebraska Corporation, whose address is P.O. Box 166, Scottsbluff, NE 69363 (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 associated uses; 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 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 consists of up to 300 acres located within the South half (S1/2) of Section 19, and the North half (N1/2) of Section 30, all in Township 25 North, Range 56 West of the 6th P.M. Sioux County, Nebraska ("Property").

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;

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 may be required.

ARTICLE 3

Option to Purchase

In consideration of the mutual covenants contained herein, the non-refundable option fee paid by City to Landowner, and other valuable consideration, Landowner grants to City, an exclusive Option to Purchase up to 300 contiguous acres located within the boundaries of the Property, for the sum of \$2,355.00 per acre purchased. Such Property shall be selected by City so as to exclude the Property on which Landowner has an existing water well, well infrastructure and water pipeline. In the event City is unable to select suitable acres for its purposes that excludes the water well and pipeline, City shall drill and establish another comparable water well, well infrastructure and pipeline to replace the well and pipeline taken by City. In the event City exercises its option to purchase, and closes on the purchase, the purchase price shall be paid by City to Landowner as follows:

- A. City shall pay the sum of \$20,000.00 as down payment and earnest money deposit at the time City exercises its option. Such sum shall be paid to or deposited with the Closing Agent, to be retained and distributed to Landowner by Closing Agent at the time of closing.
- B. The non-refundable option fee of \$25,000, identified in Article 4 herein, and paid by City shall be credited against the purchase price.
- C. The remaining purchase price shall be paid by City in immediately available funds.
- D. Landowner agrees that in consideration of the non-refundable option fee herein, Landowner will not sell the Property to any other Buyer than the City for a period of five years from date of signing of this Agreement.

ARTICLE 4

Compensation

City agrees to pay Landowner the non-refundable sum of \$25,000.00 to enter the Property and conduct and complete its evaluations to determine the suitability of the Property for the desired use, and as consideration for the option to purchase Property provided for herein. Should the Property prove suitable for the desired use and if City wishes to exercise the option to purchase provision of this Agreement (Article 3), City shall pay Landowner the sum of \$2,355.00 per acre of Property 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 Property under the option to purchase shall be made as hereafter provided. In the event the activities of City in exploring and investigating the suitability of the Property for City’s intended purpose shall cause any damage to other Property of Landowner not purchased by City, City shall remediate and restore such damage to return the Property to the

condition it was in before City undertook its activities, or pay to Landowner the reasonable cost to restore such Property. In the event City elects not to exercise its option to purchase, City shall likewise remediate and restore the Property of Landowner as provided for herein, or pay Landowner the reasonable cost to be incurred in making such restoration. All such damage payments or restoration and or remediation costs shall be in addition to the compensation provided for in this Article.

ARTICLE 5

Title, Conveyance, Insurance, and Closing Costs

If City 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 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 represent it has not received any notice of any special assessments which affect the Property and to the Landowner's knowledge, no such assessments are pending or contemplated.

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 7

DEFAULT

In the event City, after exercising its option to purchase, shall default and fail to close on such purchase as provided for herein, Landowner shall retain the down payment and earnest money deposit of City as liquidated damages arising out of the default by City, and this Agreement shall be of no further force or effect. In the event Landowner shall default and fail to close on the sale to City, City shall be entitled to pursue any and all remedies provided by law or in equity, against Landowner, arising out of the default by Landowner.

ARTICLE 8 ACCESS EASEMENT

In consideration of the purchase of Property by City, the payment of the sum of One Dollar(\$1.00), and for other valuable consideration, Landowner grants to City a Perpetual Access Easement, over and across the Property retained by Landowner to the closest public road, along a route to be determined at the time City exercises its Option to Purchase, and the Property to be purchased has been identified. Such Easement shall be along the most practicable direct route to the public road, and shall be established in such fashion as to minimize the interference of the access easement to the retained Property of Landowner. The dimensions of the access easement shall be sufficient to provide a suitable road for commercial truck traffic to reach the Property purchased by City, but shall not exceed a width of 100 feet. It shall be the responsibility of City to develop and maintain the roadway in such fashion as to prevent damage to any of Landowner's retained land.

ARTICLE 9 Miscellaneous

9.1 **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.

9.2 **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.

9.3 **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.

9.4 **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.

9.5 **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.

9.6 **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.

9.7 **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.

9.8 **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

F X LAND COMPANY, A Nebraska Corporation, LANDOWNER

BY: _____
NAME: _____
TITLE: _____

BY: _____
NAME: David Laucomer
TITE: President

CITY OF SCOTTSBLUFF, NEBRASKA

BY: _____
NAME: _____
TITLE: _____

STATE OF NEBRASKA)

The above and foregoing instrument was acknowledged by David Laucomer, President of FX Land Company, LANDOWNER, for and on behalf of the said company, on this ____ day of December, 2020.

Notary Public

The above and foregoing instrument was acknowledged by _____, whose title is _____, for and on behalf of the City of Gering, Nebraska, CITY in this agreement, on this ____ day of December, 2020.

Notary Public

The above and foregoing Agreement was acknowledged by _____, as Mayor of Scottsbluff, Nebraska, a municipal corporation, for and on behalf of the City of Scottsbluff, Nebraska, on this ____ day of December, 2020

Notary Public