

# **City of Scottsbluff, Nebraska**

**Monday, March 7, 2022**

**Regular Meeting**

## **Item Reports3**

**Council to consider and review Option Agreement with Site Exploration for proposed Municipal Aquatics Facility and authorize the Mayor to sign the Agreement.**

**Staff Contact: Kevin Spencer & Liz Loutzenhiser, Interim City Man**

## **SITE EXPLORATION AGREEMENT AND OPTION TO PURCHASE**

This Site Exploration Agreement and Option to Purchase (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Scottsbluff, Nebraska, a municipal corporation (hereinafter “City”) and Smith Land Company, LLC, a Nebraska limited liability company (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 a municipal aquatics center the City (“desired use”); and

WHEREAS, if City concludes that the Property meets or exceeds the standards for a municipal aquatics center and is suitable for such use, City desires an option to purchase the described Property to locate a new municipal aquatics center 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 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:

Lot 1, Block 2, WEBBER MANOR FOURTH SUBDIVISION to the City of Scottsbluff, Scotts Bluff County, Nebraska, situated in the SE¼of Section 14, Township 22 North, Range 55 West of the 6<sup>th</sup> P.M., Scottsbluff County, Nebraska,  
containing approximately 7.054 acres, more or less. (“Property”)

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

Landowner 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 environmental investigations that may include drilling and constructing ground water monitoring wells and 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 is allowed on the Property to complete the stated purposes.

### **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 to accomplish its desired use. This option may be exercised at any time prior to the expiration of the one (1) year period after the date of this Agreement

### **ARTICLE 4**

#### **Compensation**

4.1 **Compensation and Purchase Price.** City agrees to pay Landowner \$5,000.00 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 appraise at or above the Purchase price, as defined below, the City may exercise the option to purchase provision of this Agreement (Article 3). Should the City decide to exercise the option to purchase, City shall pay \$500,000.00 as the purchase price for the Property (“Purchase Price”). The \$5,000.00 to enter and access the Property shall be credited to the Purchase Price. The remaining payment of the Purchase Price for the Property under the option to purchase shall be made at closing in cash or its equivalent.

4.2 **Conditional on Removal of Restrictive Covenants.** The Landowner acknowledges there are currently Restrictive Covenants on the Property that would prevent the City from its desired use. If the Landowner is unable to remove the Restrictive Covenants from the Property within the one (1) year option period, then the City may cancel this Agreement by giving written notice to the Landowner and the Landowner agrees to refund the \$5,000.00 paid by the City for the option to purchase within thirty (30) days of the written notice.

### **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 by giving written notice to the Landowner; (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 Landowner’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 notice of any special assessments which affect the Property and to the Landowner's knowledge, no such assessments are pending or contemplated.

## **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 shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties expressly waive and disclaim, in connection with interpretation and construction of this Agreement, 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 in this Agreement 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 its enforcement shall be governed by the laws of the State of Nebraska.

8.3 **Severability.** The various terms, provisions, and covenants contained in this Agreement 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.

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 twelve (12) months after the closing.

8.8 **Entire Agreement and Amendments.** This Agreement and other documents delivered pursuant to its provisions, set forth the entire agreement between Landowner and City with respect to the transactions contemplated 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 SCOTTSBLUFF, A  
NEBRASKA MUNICIPAL  
CORPORATION

SMITH LAND COMPANY, LLC,  
A NEBRASKA LIMITED LIABILITY  
COMPANY, LANDOWNER

By: _____	By: _____
Name: _____	Name: _____
Its: _____	Its: _____