

City of Scottsbluff, Nebraska

Monday, September 19, 2022

Regular Meeting

Item Resolut.1

Council to consider a Resolution authorizing the purchase and acquisition of real estate and authorizing Interim City Manager Spencer to sign closing documents for the purchase of property located at 904 West 27th Street.

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

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (the "Agreement") is made on August 22, 2022 by and between Auto Spa LLC, a Nebraska limited liability company (the "Seller") and the City of Scottsbluff, Nebraska a municipal corporation (the "Buyer").

1. Recitals:

a. The Seller owns the following described real estate (the "Real Estate"):

Lot 1, Block 1, Plat of Burlington Northern Subdivision of Blocks One, Two, Three, Four, Five and Six, A Subdivision of the City of Scottsbluff, situated in part of the NE¼ of Section 22, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska.

b. The Seller desires to sell and the Buyer desires to buy the Real Estate, under the terms and conditions set forth below.

2. **Purchase Price:** The "Purchase Price" shall be \$36,000.00, payable in cash or the equivalent at Closing.

3. **Closing and Possession:** Closing shall occur within Thirty (30) days after all conditions to Closing in paragraph 5 below have been met. Closing shall occur at a time and place mutually agreeable to the parties. At Closing, the Seller shall deliver to the Buyer a Warranty Deed to the Real Estate. The Buyer shall take possession of the Real Estate at Closing.

4. Performance at Closing:

a. The Buyer shall provide or execute at or before Closing:

i. The Purchase Price.

ii. Evidence that the persons executing the documents on behalf of the Buyer, if applicable, are duly entitled and authorized to do so.

iii. A closing or settlement statement mutually agreeable to the parties.

b. The Seller shall provide or execute at or before Closing:

i. A Warranty Deed to the Real Estate.

ii. Evidence that the person executing the documents on behalf of the Seller is duly entitled and authorized to do so.

iii. Satisfactory evidence of the release or full payment of any and all indebtedness secured by a mortgage or deed of trust on the Real Estate, if any.

iv. Satisfactory title commitment insurance binder showing marketable title in Seller.

v. A closing or settlement statement mutually agreeable to the parties.

5. Conditions to Closing:

a. Closing of this Agreement is conditional upon the City Council of the Buyer authorizing the purchase after a public hearing, and notice thereof, on the matter, as set forth in Neb. Rev. Stat. § 18-1755. The Buyer specifically reserves the right to terminate this Agreement with or without cause following the public hearing on the purchase.

b. Closing of this Agreement is conditional upon the Buyer receiving a title commitment insurance binder showing marketable title can be conveyed by Seller.

6. Evidence of Title:

The Buyer and Seller agree to divide the cost of a title commitment insurance binder for the Real Estate. If the title commitment insurance binder shows defects in title that make the Real Estate not marketable, the Seller may correct any defects in title before Closing, at Seller's expense. If the Seller elects not to correct any defects in title, the Buyer shall have the option to terminating this Agreement or waiving the defect in title at Closing.

7. Taxes:

The Seller shall pay all real estate taxes and special assessments levied against the Real Estate for all years prior to the year of Closing along with all special assessments levied on the Real Estate in full. The real estate taxes for the year of Closing shall be prorated between the parties to the date of Closing based on the most recent tax statement available. The Seller has not received any notice of special assessments which affect the Real Estate and to the Seller's knowledge, no such assessments are pending or contemplated.

8. Risk of Loss:

Risk of loss for all improvements to the Real Estate shall remain with the Seller until Closing.

9. Inspection and Warranties:

Buyer has personally inspected the Real Estate and is entering into this Agreement based upon that inspection and not any representations or warranties, express or implied, made by the Seller, except as otherwise provided in this Agreement. The Seller agrees to deliver the Real Estate and the Buyer agrees to accept the Real Estate in its present condition "as is", "where is" and without any repair or correction, reasonable wear and tear excepted.

10. Expenses of Sale: Expenses of sale shall be paid as follows:

a. The Seller shall pay the Documentary Stamp Tax, if any.

b. The Buyer shall pay all document recording fees imposed by the Scotts Bluff County Register of Deeds.

c. The Buyer and Seller shall equally divide the cost of any title commitment insurance binder.

d. The Buyer and Seller shall equally divide all closing fees assessed by any closing agent or company.

e. Each party shall pay their own their own realtor fees, attorney's fees and accountant's fees.

11. Termination:

a. Unless otherwise set forth in this Agreement, this Agreement may be terminated before Closing by mutual agreement of the parties.

b. If this Agreement terminates according to any of its terms and conditions, it will have no further force or effect except for any provision intended to survive the termination of this Agreement. The parties' rights under this paragraph are cumulative and are in addition to the other rights and remedies available to them under any other agreement or applicable law.

12. Covenants:

a. Seller agrees and states that it has not entered into any other sales agreement for the Real Estate, and shall not enter into any other agreement after the execution of this Agreement until this Agreement is terminated.

b. Seller shall not sell, assign, or convey any right, title, or interest in or to the Real Estate, or create or permit to attach any new lien, security interest, easement, encumbrance, charge, or condition affecting the Real Estate.

c. There are no leasehold or tenancy interests on the Real Estate that shall survive the Closing, and the Seller shall not enter into any new leases, tenancies, or other occupancy arrangements affecting any portion of the Real Estate, unless otherwise authorized to do so by the Buyer.

d. To the best of Seller's knowledge, there is no actual or threatened suit or claim resulting from any controversy which may adversely affect the Real Estate or its ownership.

e. To the best of Seller's knowledge, there are no claims for construction liens or any unpaid amounts for labor or materials which would give rise to construction liens on the Real Estate.

f. The Seller has received no notices 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 Seller's operation of the Real Estate does not comply with all applicable governmental laws, rules and regulations.

g. To the best of Seller's knowledge, there are no latent defects in the Real Estate.

13. Notices: Any notices or other communications to the Seller or the Buyer which are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been given if sent by regular U.S. first class mail, or by certified mail, return receipt requested, or by recognized overnight delivery service to the respective parties to the addresses set out below.

If to Seller

Auto Spa LLC

c/o Casey York
902 Mockingbird Drive
Scottsbluff, NE 69361

If to Buyer

City of Scottsbluff
c/o Kimberly Wright
2424 Circle Drive
Scottsbluff, NE 69361

14. General Provisions:

a. This Agreement shall not be assignable by either party without the consent of the other party. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. No assignment of all or any portion of this Agreement shall relieve any party of its obligations under this Agreement.

b. The parties agree that time is of the essence with respect to this Agreement.

c. 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.

d. This Agreement may be executed in one or more counterparts, each of which may be considered as an original.

e. This Agreement contains the entire agreement of the parties and the terms and provisions of this Agreement supersede all other terms and provisions previously extended to either party. This Agreement may be subsequently amended only in writing signed by all parties.

f. This Agreement shall be construed according to the laws of Nebraska.

[SIGNATURE PAGE FOR REAL ESTATE AGREEMENT]

SELLER: Auto Spa LLC, a Nebraska limited liability company

DocuSigned by:
BY Casey York
Casey York, Authorized Member
Date: 8/21/2022

BUYER: The City of Scottsbluff, Nebraska

BY Jeanne McKerrigan
Jeanne McKerrigan, Mayor

Date: 08/22/2022

RESOLUTION 22- _____

WHEREAS, The City of Scottsbluff, Nebraska (“City”) has conducted a Public Hearing, following proper notice, to discuss and consider acquiring real property, by purchase, within the City.

WHEREAS, public input was received and the City Council of the City now, by majority vote, resolves as follows:

NOW, THEREFORE BE IT RESOLVED:

1. The City Council ratifies and approves the Real Estate Purchase Agreement dated August 22, 2022.

2. Pursuant to the Real Estate Purchase Agreement, the City is authorized to acquire by Warranty Deed the following described real property:

Lot 1, Block 1, Plat of Burlington Northern Subdivision of Blocks One, Two, Three, Four, Five and Six, a Subdivision of the City of Scottsbluff, situated in part of the NE¼ of Section 22, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska.

3. Kevin Spencer, as Interim City Manager of the City, is authorized to execute and accept any and all documents deemed necessary or required in connection with the acquisition which are in the best interests of the City, to complete the acquisition.

Dated: September 19, 2022.

Jeanne McKerrigan, Mayor

ATTEST:

Kimberley Wright, City Clerk