

OFFER TO ACQUIRE REAL ESTATE AND ACCEPTANCE

The City of Gillette, Wyoming, a municipal corporation and city of the first class, of 201 East Fifth Street, Box 3003, Gillette, Wyoming, 82717, (hereinafter Purchaser or City), hereby offers to purchase the following described real estate (hereinafter the Premises) in fee simple from H & H Development Inc., of 3130 W. 57th Street, Suite 100B, Sioux Falls, South Dakota, 57108, hereinafter "Seller" or "H & H".

The Premises consists of a parcel in which to locate the right of way for a portion of an extension of East Boxelder Road, Lot 6C Block 1 of the Resubdivision of Lot 6A, Block 1 of Homestead Addition, according to the official plat thereof (the Plat), approved by the City of Gillette on May 19, 2015, and recorded with the Campbell County Clerk. The entire area consists of 20,828 square feet, described by the attached exhibit labeled Exhibit 1, the drawing attached thereto labeled Exhibit "A" and the Plat, a copy of which is attached and labeled Exhibit 2.

The City hereby offers (and the Seller accepts the offer) to acquire the Premises in exchange for the consideration stated below. The Seller will reserve all of Seller's right, title and interest in and to oil, gas, coal bed methane gas, and other minerals in or under the Premises.

Upon Seller's acceptance of this Offer, the City shall order and pay the cost of the title insurance on the Premises in an amount not less \$125,000. The commitment shall show that the Seller is conveying fee simple absolute title to the Premises, subject to the restrictions permitted in this Offer. Seller will cause all mortgages against the Premises to be released of record before closing. The City shall pay the recording fees for the deed.

Title shall be shown merchantable in the Seller subject to payment tender or exchange as provided hereafter and subject to compliance with the other terms and conditions set out herein. The Seller shall execute and deliver a good and sufficient statutory warranty deed in favor of Purchaser, in the form attached hereto as Exhibit "B", including the release and waiver of all homestead rights, if any, and conveying the property, excepting minerals, free and clear of all liens and encumbrances, except:

- a) The general taxes for 2015;
- b) Easement(s) for utilities;
- c) Building and zoning regulations;

- d) City, state and county subdivision laws; and
- e) Restrictions of record that do not cloud the marketable title or that Buyer waives.

General taxes for the year of closing, personal property taxes, water fees, sewer fees and any other on-going costs shall be apportioned to the date of delivery of the deed.

In exchange for conveyance of the Premises the City will provide the consideration as follows:

- 1.) The City shall pay the Seller at closing, \$6.00 per square foot for the parcel described in Exhibit 1, which price is \$125,968 for the 20,828 square feet shown on the said Exhibit 1.
- 2.) The Seller shall have no financial responsibility for and the City shall hold Seller harmless from the cost of installation, operation and maintenance of any traffic control device, whether temporary or permanent that City may choose to install at the intersection of East Boxelder Road and the North entrance to the Homestead Addition, between Lots 6A and 6B of Block 1 of the Homestead Addition.
- 3.) Seller shall also grant City such Temporary Construction Easements as it may need for the construction of Boxelder Road and/or the installation of the traffic control devices along East Boxelder Road referred to above.
- 4.) It is agreed that upon completion of use of the Construction Easement, the City will restore the surface and any areas disturbed during construction to a condition substantially equal to their condition before construction.
- 5.) The Parties agree that Seller may construct and use (before and after the closing of the sale and purchase of the Premises) an access road through the Premises in order to create access to Boxelder Road including curb cut on to Boxelder Road at its location at the time of this Agreement, herein "Seller's Access Road". Seller may construct Seller's Access Road generally at the location shown on the Development Plan, a copy of which is attached hereto as Exhibit 3. The Parties further agree that Seller shall be responsible for the construction and maintenance of Seller's Access Road within the Premises. The Parties further agree that City may construct Boxelder Road within the Premises and will coordinate construction activities with Seller in order to

maintain Seller's use of Seller's Access Road as much as practicable during City's construction, which will result in Boxelder Road nearly abutting Seller's other land to the south of the Premises, which other land is now described as Lot 6D on Exhibit 2. As part of the completion of City's construction of Boxelder Road, City shall restore such part of the Seller's Access Road as is necessary such that it still provides access from Seller's Lot 6D on Exhibit 2 on to Boxelder Road with curb cut consistent with applicable City zoning and planning and such that it is in a condition comparable to its condition before the City's construction of Boxelder Road within the Premises. At Closing, Buyer and Seller agree to execute a Road Easement for recordation so that Seller's Road Access will survive the closing of this transaction.

The performances required herein by the City involving City projects, improvements, construction, etc. shall survive closing, but they shall be accomplished, except where otherwise stated, only in the City's own due course. This agreement shall not be construed to require the City to accelerate any of its projects or to begin or complete any project, nor shall it give the Seller any right to control, direct, supervise or mandate any City design, approval, revision, construction or completion of any City project, except as provided herein.

Closing shall occur on or before August 1, 2015, however due to the large number of preliminary and/or curative performances necessary to effect the intent of this agreement, the City may upon written notice postpone closing one or more times as may be necessary through the date of January 1, 2016 in order to obtain any other legal or administrative requirements to accomplish the considerations provided herein. However, the City's ability to extend the closing date cannot cause or be used as a reason to delay or impair the necessary approvals for Seller's site plan, replat approval, and building permit application and issuance related to Seller's property located to the south of the Premises.

The Seller and its signatories represent and warrant that any undersigned representative is an agent and member of the Seller with full authority to enter into this transaction and to bind the Seller to it. The Seller represents and warrants that it holds or will obtain, by date of closing, fee simple, merchantable, title to the property, encumbered only as specifically excepted herein.

Except as stated herein, time is of the essence in this Agreement.

Upon acceptance by the Seller in writing this instrument shall become a binding contract between Seller and City and shall be binding upon and shall inure to the benefit of the respective parties hereto, their successors, representatives and assigns. This written agreement contains the entire agreement of the parties and shall not be amended, expanded or diminished except in writing by the parties with formalities equivalent to those of this agreement. Anything to the contrary notwithstanding, this agreement is subject to and contingent upon the approval of the Gillette City Council after the regular proceedings established by law.

If any legal action is instituted to enforce any of the terms of this agreement, the non-prevailing party shall pay the prevailing party's reasonable attorney's fees and all costs of the action including court costs, expert witness fees and all other actual expenses incurred in the prosecution of the action.

This agreement shall not be filed of record, but a memorandum of it may be made of record in the office of the Campbell County Clerk by either party.

Purchaser, City of Gillette, Wyoming

Louise Carter-King, Mayor
City of Gillette Wyoming

Date

(S E A L)

ATTEST:

Karlene Abelseth, City Clerk

STATE OF WYOMING)
) ss.
County of Campbell)

The above and foregoing instrument was acknowledged before me by Louise Carter-King, Mayor, City of Gillette, Wyoming and Karlene Abelseth, City Clerk, City of Gillette, Wyoming on _____, 2015.

Witness my hand and official seal.

My Commission Expires: _____ Notary Public

By their signatures Seller accepts the foregoing offer to purchase the Premises listed above.

Seller, **H & H Development Inc.:**


By: Lee M. Howell, Its Vice-President

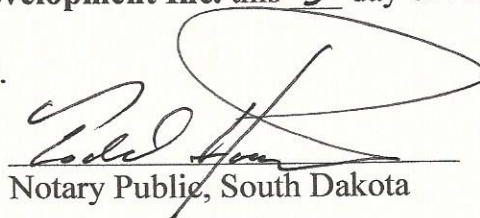
Date: 6-5-15

STATE OF SOUTH DAKOTA)
) ss.
County of Minnehaha)

The above and foregoing instrument was acknowledged before me by Lee M. Howell, the Vice-President of **H & H Development Inc.** this 5th day of June, 2015.

Witness my hand and official seal.

My Commission Expires: 2-2-2021


Notary Public, South Dakota

