PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

July 15, 2021

SUPPLEMENT TO AGENDA ITEM NO. 1B

SUBJECT: Real property matters-Update regarding the status of the marketing effort to sell the mine and consideration of offers to purchase the mine.

DISCUSSION: Under a state purchasing law applicable to the Agency, the resolution authorizing the sale of real property must state the conditions and circumstances of the sale, and the public purposes that will be achieved.

The Resolution in the Board Package attached as an Exhibit the Farm and Ranch Contract that was in the "data room" to which the bidders had electronic access. This was to show the "conditions" of the sale.

The highest bid submitted on July 13, however, submitted a Farm and Ranch Contract that differed from the Farm and Ranch Contract in the Board Package, primarily because (i) it did not contain as an attachment a form of special warranty deed and reclamation easement and (ii) it added addenda and exhibits that addressed new matters discussed below. Because of the substantial differences between the two contracts, neither one could be attached to the Resolution. Instead, the Resolution has been modified to set out in Exhibit "A" the basic elements of the transaction.

The new matters proposed in the high bid by 3S Real Estate Investments, LLC ("3S") are as follows:

1. 3S wants all mineral rights. This has been included in Exhibit "A" of the revised Resolution.

2. Escrow Holdback Concept: 3S notes that 320 acres remain under reclamation bond, 38 acres are in litigation (i.e. the Agency's trespass to try title actions), and 73 acres are subject to the Conservation Agreement relating to the Navasota Ladies Tresses. 3S proposes that, at closing, approximately $2.9 million be retained by University Title for 12 months. If, during this 12-month period, bond is released on the 320 acres, the trespass to try title suits are satisfactorily resolved, and the Conservation Agreement is terminated, then the $2.9 million plus interest would be released to the Agency. Otherwise, the $2.9 million would be returned to 3S.

Staff's goal would be to achieve a compromise in regard to the above concept. Options will be discussed during this executive session.

3. Uninsurable Land Concept: 3S has proposed that the Agency will not be paid for any acreage which the Title Company refuses to insure under the Title Policy. The obvious problem here is that the title work is not complete, there is no title commitment at this time, and the Agency has no idea how much, if any, acreage is uninsurable. Further, this proposal ignores the fact that the Mine has been occupied by the Agency for forty years and the possibility of title through adverse possession.

Staff's goal would be to achieve a compromise in regard to the above concept. Options will be discussed during this executive session.

4. 3S wants to receive "all Seller's interest in the rights of way, easements, or fee title land included in Seller's Railway Spur connecting property to Highway 6".

This has been included in Exhibit "A" of the attached Resolution.

BACKUP MATERIAL: High bid by 3S, attached to this confidential memorandum.

ACTION REQUESTED: In open session, consideration and action on Resolution No. 2021-7-2.