

# **City of Scottsbluff, Nebraska**

**Monday, July 18, 2016**

**Regular Meeting**

## **Item Resolut.2**

**Council to consider the contract selling approximately 39.22 acres of city-owned property in Immigrant Trail Subdivision to Samuel G. Adams in the amount of \$215,000.00 and authorize the Mayor to execute the contract.**

**Staff Contact: Nathan Johnson, City Manager**

## **AGREEMENT**

This Agreement is made on July \_\_, 2016 between the City of Scottsbluff, Nebraska, a Municipal Corporation, (the “Seller”) and Samuel G. Adams, a married person, (the “Buyer”).

### **Recitals:**

a. The Seller is the owner of the following described real estate along with all permanent improvements (the “Real Estate”):

Lot 2, Block 6, Immigrant Trail Subdivision a Replat of Block 6, Immigrant Trail Subdivision and part of Lot 2, Block 1, Second Immigrant Trail Subdivision, Scotts Bluff County, Nebraska, containing approximately 39.22 acres, more or less.

b. The Seller desires to sell and the Buyer desires to purchase the Real Estate according to the terms of this Agreement.

### **Agreement:**

#### **1. Purchase Price:**

The Purchase Price shall be \$215,000.00, payable as follows:

- a. \$ 1,000.00 as a down payment payable at the time of signing this Agreement (the “Down Payment”). The Down Payment shall be paid to the Closing Agent and held until closing, at which it shall be applied to the Purchase Price or until termination of this Agreement at which time it shall be returned to the Buyer.
- b. The balance of \$214,000.00 shall be paid at Closing in cash or cash equivalent.

#### **2. Closing and Possession:**

Possession shall be delivered to the Buyer at the time of closing (the “Closing”). The Closing shall take place within thirty (30) days after the expiration of time for filing a remonstrance against the sale, but in no event shall the closing be later than November 30,

2016 . At the Closing, the Seller shall deliver to the Buyer a Warranty Deed free and clear of all liens and encumbrances, excepting easements, restrictions, reservations, rights-of-way of record and subject to standard exceptions in the title insurance policy.

**3. Evidence of Title:**

Prior to the Closing, the Seller shall furnish to the Buyer a title insurance commitment binder showing that the Seller has merchantable title to the Real Estate. The Seller shall have a reasonable time to correct any defects and, if necessary, the Closing shall be delayed accordingly. If it is impossible to perfect title or if defects exist which will require court action or an unreasonable expense or time to cure, the Buyer or Seller shall have the option to terminate this Agreement upon written notice to the other party. In the event the either party elects to terminate this Agreement, the Down Payment shall be returned to the Buyer.

**4. Taxes:**

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

**5. Risk of Loss:**

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

**6. Inspection and Disclosures:**

The Buyer has personally inspected the Real Estate and is entering into this Agreement based on that inspection and not on any representations or warranties, express or implied, made by the Seller. The Buyer is purchasing the Real Estate "AS IS".

**7. Conditional Agreement:**

This Agreement and the Closing are conditional upon no remonstrance against the sale being filed. If a valid remonstrance is filed, the Closing shall not take place and the Down Payment shall be returned to the Buyer. The Buyer acknowledges the Seller is required to

pass an Ordinance, provide Notice and publish terms of this Agreement prior to the time the parties are able to close this Agreement.

**8. Buyer's Agreement:**

Buyer agrees, and the Seller is expressly relying upon the Buyer agreeing to abide with the Declaration of Covenants and Restrictions for Immigrant Trail Subdivision recorded as Instrument #2005-7805 in the records of the Scotts Bluff County Register of Deeds Office. Buyer agrees not participate in or commence any Amendments to the declarations as set forth in Section 14.6 until the 20 year term expires as set forth in Section 14.7.

In addition, Buyer agrees to use it best efforts to develop the Real Estate and so do in a reasonable and timely fashion.

**9. Seller's Representations:**

The Seller represents to the Buyer that to the best of the Seller's knowledge:

a. No sources of contamination exist on the Real Estate which would obligate the Buyer to clean up expenses under Federal or State environmental laws and regulation, and the Seller has received no notice of the existence of such contamination. In addition, the Seller has received no notice of any action or proposed action by governmental authorities concerning contamination of the Real Estate. Buyer is entitled to obtain a Phase I inspection at his expense.

b. 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 current operation of the Real Estate does not comply with all applicable governmental laws, rules, and regulations.

c. There is no actual or threatened, suit or claim resulting from any controversy which may adversely affect the Real Estate or its ownership.

d. There are no claims for construction liens or any unpaid amounts for labor or material which would give rise to construction liens.

**10. Expenses of Sale:**

The cost of the preparation of this Agreement shall be paid by Seller. Both parties shall equally divide the cost to prepare the Warranty Deed along with the cost of closing,

including preparing the closing statement, and the cost of any owner's title insurance coverage. The cost of the documentary stamp tax, if any, shall be paid by the Seller. Buyer shall pay any fee to which a realtor may be entitled as a result of this Agreement.

**11. Default:**

Time is of the essence. If either party shall default in the performance of this Agreement, the other party shall have all legal remedies available to them.

**12. General Provisions:**

- a. This Agreement shall not be assignable by either party.
- b. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns; provided, however, no assignment of all or any portion of this Agreement shall relieve any party of its obligations under 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 shall be construed according to the laws of Nebraska.
- f. This Agreement contains the entire agreement of the Parties. This Agreement may be amended only in writing signed by all parties.

[SIGNATURE PAGE WILL FOLLOW]

CITY OF SCOTTSBLUFF, NEBRASKA  
a Municipal Corporation, SELLER,

By \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Samuel G. Adams, Buyer

\_\_\_\_\_  
City Clerk

State of Nebraska, Scotts Bluff County:

This Agreement was acknowledged before me on \_\_\_\_\_, 2016, by Randy Meininger, Mayor of the City of Scottsbluff, Nebraska, Seller.

\_\_\_\_\_  
Notary Public

State of Nebraska, Scotts Bluff County:

This Agreement was acknowledged before me on \_\_\_\_\_, 2016, by Samuel G. Adams, a married person, Buyer.

\_\_\_\_\_  
Notary Public