

# **City of Scottsbluff, Nebraska**

**Monday, August 29, 2016**

**Regular Meeting**

## **Item Reports1**

**Council to consider a termination of Farm Lease by mutual consent with Rodney Adams and authorize the Mayor to execute the contract.**

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

**TERMINATION OF FARM LEASE BY MUTUAL CONSENT**

This Termination of Farm Lease by Mutual Consent ("Agreement") is made on August \_\_\_\_, 2016, by and between the City of Scottsbluff, Nebraska, a Municipal Corporation, ("Lessor") and Rodney Adams ("Lessee").

1. In February of 1976, the Lessor and Lessee entered into a Farm Lease wherein the Lessor leased to the Lessee farm property located East of the City of Scottsbluff in Scotts Bluff County, Nebraska. A copy of the Farm Lease is attached hereto, marked as Exhibit A and incorporated by this reference.
2. The Lessor and the Lessee have decided it is in their mutual best interests to cancel and terminate the Farm Lease, and it is the intention of the Lessor and Lessee to effect a cancellation of the Farm Lease by this instrument.
3. The Lessor and Lessee agree the termination of the Farm Lease shall occur on November 30, 2016 or whenever Lessee has completed harvesting the crops on the premises, whichever shall be the last to occur ("termination date").
4. The Lessor and Lessee mutually release and discharge each other from any and all claims, demands, or causes of action they may have against each other, their successors and assigns, arising from the termination of the Farm Lease. The Lessor and Lessee agree that the Farm Lease is to be cancelled and terminated, the term of the Farm Lease shall be brought to an end as of the termination date of the Farm Lease, with the same force and effect as if the term of the Farm Lease was fixed to expire on the termination date by the provisions of the Farm Lease.

This Agreement shall bind and enure to the benefit of the parties and to their respective heirs, successors and assigns.

CITY OF SCOTTSBLUFF, NEBRASKA,  
a Municipal corporation,

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

ATTEST:

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

  
\_\_\_\_\_  
Rodney Adams

### FARM LEASE

THIS AGREEMENT made and entered into this February day of 1976, by and between CITY OF SCOTTSBLUFF, NEBRASKA, A Municipal Corporation, party of the first part, and RODNEY ADAMS, party of the second part.

WITNESSETH: That the said party of the first part has this day leased unto the said party of the second part the following described property situated in the County of Scotts Bluff and State of Nebraska, to-wit:

TO HAVE AND TO HOLD the same unto the said party of the second part from the 1st day of March 1976, to the 28th day of February, 1977, and from year to year thereafter \*  
And the said party of the second part in consideration of the leasing of said premises hereby covenants and agrees to and with the said party of the first part to pay the said party of the first part as rent for the same, as follows, to-wit:

- 1/4 of sugar beets
- 1/3 of beans
- 1/3 of corn
- 2/3 of sugarbeet tops

Said rent share above provided for out of the several crops raised on the land shall be harvested at his own expense by the said party of the second part and by him placed without waste in crib or granary at such place as the parties mutually agreed upon.

The said second party further expressly agrees, with the party of the first part, as a part of the consideration for the making of this lease, as follows:

1. That he will plant, sow, cultivate, irrigate and harvest all crops on said premises in good and workmanlike manner and in proper season; that he will in careful, proper and workmanlike manner distribute any and all irrigation water to said land and growing crops to which said land may be entitled, and further agrees to keep a man constantly with the water to properly distribute the same on said lands whenever same is to be had; that he will not permit any waste of the water allotted to said lands for irrigation purposes, nor permit said water to run on any public highway, and agrees to pay all damages which may accrue by reason of any such neglect; that he will destroy all Russian thistles and other weeds and prevent same from growing along fences, roads, laterals and from along the edge or border of all cultivated fields, and in the public highway on the half of the public highway adjacent to said land; that he will disk or plow all land not planted to crops as early in the spring as the frost is out of the ground; and disk all stubble land upon which small grain has been grown as soon as the grain is harvested; that he will mow and stack all alfalfa in proper season and fence the same at his own expense; and that the party of the first part shall have the right of determining whether the alfalfa shall be left for seed or mowed for hay.
2. That he will not during the term of this lease permit any cattle or other stock to pasture on the alfalfa land unless written consent be obtained therefor from the first party; that he will not pasture stock of any kind on any of the said land, except such as may be actually owned by said second party.
3. To carefully protect all buildings, fences, and improvements of every kind that are now on said premises or any that may be hereafter erected during the term of this lease, including pumps, and windmills; that he will keep the windmill oiled and keep the well, pump and windmill in good repair without expense to the first party.
4. To take good care of all growing trees thereon, and protect them from being destroyed by fire or otherwise, and agrees not to remove or allow any other person to remove and remove.
5. To haul all fence posts and building material required on said premises and do and perform all labor in building and repairing of fences, bridges and laterals on said premises during said term without expense to said first party.
6. To give to the said party of the first part at least three days notice before threshing; to gather the rent share of the corn not later than December 15, 19..... That the second party will not gather his share of corn first; but that all crops grown under this lease shall be divided as follows, to-wit: All corn to be divided as gathered, all wheat and other small grain divided at the machine, all hay, cane and other rough feed to be stacked and divided in the stack.
7. That he will not prepare the ground for or plant or sow any crop on said premises which will not mature until after the expiration of the term of this lease without first obtaining the written consent of the party of the first part.
8. That he plant or sow no cane, millet, barley or oats on said land, except as may be especially agreed herein.
9. That said party of the first part or his agents or employes, shall he deem it necessary for the proper care and preservation of the crops on said premises, may at the cost and expense of the party of the second part employ men and teams to go upon said premises and cultivate the crops, or any part thereof, or harvest or irrigate the crops, or do anything that is necessary to promote their growth or to save them at any time before they are in the granaries, or to destroy Russian thistles or other weeds upon said premises, or in public highways or along the fences or edges or borders of fields or along laterals; and the first party shall be entitled and authorized to pay for such labor the sum of \$2.50 per day for single hands and \$4.00 per day for man and team and second party agrees that all moneys so expended shall be included in and secured by the lien given by him for the rent accruing under this lease.

\* until terminated.





12. That the second party shall not re-lease, sub-lease or assign this lease or any part thereof without the written consent of said first party; and that at the expiration of the term herein granted he will surrender peaceable possession of said premises unto the party of the first part or his assigns with all buildings or other improvements thereon belonging to said first party in as good condition as they now are or may be at any time during the continuance of this lease, ordinary wear and loss by fire excepted; and it is further expressly agreed that no extension of this lease shall be binding on either party until the same shall be reduced to writing and signed by the parties hereto; and no conversation which the parties may have with reference to extending this lease or making another lease for a new term shall be considered a contract until the same shall be reduced to writing and signed by the parties hereto.

13. The party of the first part reserves the right and is entitled to build or construct irrigation laterals through any part of said land for the purpose of running water for irrigation purposes to any other lands owned by the first party, and second party hereby waives any and all claims for damages which may be incurred thereby.

14. Said party of the first part or his lessees or assigns may at any time during the term of said lease go upon said premises to inspect the same, or to make improvements thereon, or to break new land, or for the purpose of fall plowing and irrigating; and at any time after the first of August, 19....., may enter upon the stubble land on which small grain has been grown for the purpose of irrigating and preparing the same and planting or sowing crops thereon, and upon the ground upon which corn is grown during said season at any time on or after the first day of September, 19....., to irrigate and plant or sow small grain, in such corn field; and the said party of the second part agrees to protect any crops so planted during the term of this lease.

15. If the said party of the second part shall refuse or neglect to give the chattel mortgage provided for herein to secure the same, he shall give or attempt to give any other person or persons any lien upon his portion of said crops prior to the execution and delivery of the chattel mortgage to the party of the second part or if he shall fail, neglect or refuse to perform any of the conditions or terms of this lease on his part to be performed, then this lease shall at once terminate and be at an end, and the said party of the first part shall be entitled to immediate possession of said premises and all crops thereon, and said second party shall in that event be held and considered to have planted said crops for the benefit of said first party and shall be paid for such services as follows: Second party may sell said crop in the condition it then in, for cash at private sale; or he may at his option cause said crops to be further cultivated, or gathered and sold in such market as he may see fit, in either event the proceeds thereof shall be applied first to the payment of the expense incurred by said first party in the premises, including any services by him in connection therewith, second, in the payment of said rent due him under the terms of this lease, third, the remainder, if any, shall be paid to the party of the second part for his services in planting and cultivating said crop and seed furnished by him.

It is further agreed that this lease includes and embodies all of the terms and conditions of the contract between said parties and that no statement, representation, promise, agreement or condition of any character shall be binding upon either party hereto unless embodied in this written lease.

16. Party of the first part shall pay all water charges, and each party shall pay a share of the cost of insecticides and chemical fertilizer which is proportionate to the party's interest in the crop on which the insecticide or fertilizer is used.

17. This lease also is subject to the terms and conditions set forth in an ADDENDUM which is attached to and is by reference incorporated in and made

The covenants and agreements herein shall extend to and be binding upon the heirs, executors and administrators of the parties to this lease.

Dated this 27th day of February, 1976.

WITNESS:  
*[Signature]*  
 City Clerk  
 STATE OF NEBRASKA, Scotts Bluff County, ss.

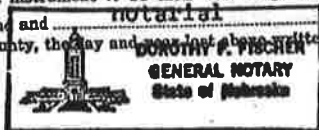
CITY OF SCOTTSBLUFF, NEBRASKA  
 By *[Signature]* Mayor  
*[Signature]*  
 Rodney Adams, A. D. 1976, before me

On this 27th day of February, 1976, a notary public duly

not qualified for and residing in said county, personally came *[Signature]* Mayor of the City of Scottsbluff, Nebraska, a municipal corporation the said lessor.

to me known to be the identical persons described in and who executed the foregoing conveyance as lessor, and acknowledged the said instrument to be their voluntary act and deed of the corporation.

WITNESS my hand and seal at Scottsbluff, Nebraska in said county, this day and year last above written.



*[Signature]*  
 Notary Public  
 My commission expires: Feb. 11, 1977

\* a part of this lease.

F A R M L E A S E

FROM \_\_\_\_\_ TO \_\_\_\_\_

From \_\_\_\_\_ 19\_\_\_\_ To \_\_\_\_\_ 19\_\_\_\_

STATE OF \_\_\_\_\_ County \_\_\_\_\_ ss.

Filed for Record \_\_\_\_\_ M. A. D. 19\_\_\_\_

and recorded in Book \_\_\_\_\_ of \_\_\_\_\_ Page \_\_\_\_\_

Clark \_\_\_\_\_ Deputy \_\_\_\_\_

The Rufinas General Supply House, Lincoln, Nebr.

## AGREEMENT

This Agreement is made on \_\_\_\_\_, 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 December 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". The parties acknowledge that a portion of the Real Estate is subject to a Farm Lease and that the Seller has taken steps to terminate the Farm Lease and deliver possession of the Real Estate to the Buyer at the time of the Closing.

**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 his best efforts to develop the Real Estate and do so 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