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TO: Mayor, Council, and Manager

FROM: David S. Bruner, Attorney DSB

DATE: January 13, 2017

RE: WWTP Property Farm Lease

The City owns approximately 15 acres of land south of the Wastewater Treatment Plant. The land was farmed by Justin A. Hoffman for the 2016 growing season. The lease will expire on March 1, 2017. The new lease is substantially the same as the prior leases over the last 5 years with the exception of the annual cash rent amount. The new annual cash rent is $3,375, down from $4,500. Farm cash rent has been on the decline for 3 years. The City may have received above market rent the last 2 years, while receiving $300 an acre. The 2017 rent is proposed to be $225 an acre, which is closer to the market rate estimated by Iowa State Extension Office. We also know that an acre or two is very susceptible to water/flood damage every year.

A copy of the lease and resolution approving the lease is attached.

RECOMMENDATION: Council consideration and approval of the resolution approving a farm lease with Justin A. Hoffman.

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RESOLUTION NO. _____
RESOLUTION APPROVING FARM LEASE

WHEREAS, of the Code of Ordinances of the City of Carroll, Iowa, provides that all contracts made by the City be reduced to writing and approved by the City Council by resolution; and

WHEREAS, the farm lease for land owned by the City is attached hereto as Exhibit "A"; and

WHEREAS, it is determined that the approval of the attached farm lease is in the best interest of the City of Carroll, Iowa;

NOW, THEREFORE, BE IT RESOLVED that the farm lease with Justin A. Hoffman attached as Exhibit "A", be authorized and approved, and that the Mayor and City Clerk are authorized to execute the contract on behalf of the City of Carroll.

PASSED AND APPROVED by the City Council of the City of Carroll, Iowa, this ____ day of January, 2017.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

BY: _____
Eric P. Jensen, Mayor

ATTEST:

BY: _____
Laura A. Schaefer, City Clerk

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FARM LEASE - CASH

THIS LEASE ("Lease") is made between **City of Carroll**("Landlord"), whose address for the purpose of this Lease is **112 E 5th Street, Carroll, Iowa 51401** and **Justin A. Hoffman** ("Tenant"), whose address for the purpose of this Lease is **21093 Hawthorne Avenue, Carroll, Iowa 51401**.

THE PARTIES AGREE AS FOLLOWS:

1. **PREMISES AND TERM.** Landlord leases to Tenant the following real estate situated in Carroll County, Iowa (the "Real Estate"):

Irregular Survey of Lot 2 Northeast Quarter of the Southeast Quarter, Section 30, Township 84 North, Range 34 West of the 5th P.M., Carroll County, Iowa

and containing 15 tillable acres, more or less, with possession by Tenant for a term of **one (1)** year to commence on **March 1, 2017**, and end on **February 28, 2018**. The Tenant has had or been offered an opportunity to make an independent investigation as to the acres and boundaries of the premises. The Tenant will accept service of Notice of Termination of this farm lease at or about the same time this lease is executed. No further Notice of Termination shall be given or required by the Landlord.

2. **RENT.** Tenant shall pay to Landlord as rent for the Real Estate (the "Rent"):

a. Total annual cash rent of $3,375 payable, unless otherwise agreed, as follows:

$1,687.50 on March 1, 2017
$1,687.50 on December 1, 2017

All rent is to be paid to Landlord at the address above or at such other place as Landlord may direct in writing. Rent must be in Landlord's possession on or before the due date. Participation of this farm in any offered program by the U.S. Department of Agriculture or any state for crop production control or soil conservation, the observance of the terms and conditions of this program, and the division of farm program payments, requires Landlord's consent. Payments from participation in these programs shall be divided 0% Landlord 100% Tenant. Governmental cost-sharing payments for permanent soil conservation structures shall be divided 100% Landlord 0% Tenant. Crop disaster payments shall be divided 0% Landlord 100% Tenant.

3. **LANDLORD'S LIEN AND SECURITY INTEREST.** As security for all sums due or which will become due from Tenant to Landlord, Tenant hereby grants to Landlord, in addition to any statutory liens, a security interest as provided in the Iowa Uniform Commercial Code and a contractual lien in all crops produced on the premises and the proceeds and products thereof, all contract rights concerning such crops, proceeds and/or products, all proceeds of insurance collected on account of destruction of such crops, all contract rights and U.S. government and/or state agricultural farm program payments in connection with the above described premises whether such contract rights be payable in cash or in kind, including the proceeds from such rights, and any and all other personal property kept or used on the real estate that is not exempt from execution. Tenant shall also sign any additional forms required to validate the security interest in government program payments.

Tenant shall not sell such crops unless Landlord agrees otherwise. Tenant shall notify Landlord of Tenant's intention to sell crop at least three (3) business days prior to sale of the crop (with business days being described as Monday through Friday, except any Iowa or federal holidays). Tenant shall pay the full rent for the crop year in which the crop is produced, whether due or not, at the time of sale pursuant to Landlord's consent to release Landlord's security interests. Upon payment in full Landlord shall release Landlord's lien on the crop produced in that crop year on the premises. The parties agree that by the Landlord releasing the lien as to the crop in one year, the Landlord in no way releases the lien or agrees to release the lien in any prior or subsequent year.

Tenant shall sign and deliver to Landlord a list of potential buyers of the crops upon which Landlord has been granted a security interest in this lease. Unless Landlord otherwise consents, Tenant will not sell these crops to a buyer who is not on the potential list of buyers unless Tenant pays the full rent due for the crop year to the Landlord at or prior to the date of sale. Landlord may give notice to the potential buyers of the existence of this security interest.

Landlord is further granted the power, coupled with an interest, to sign on behalf of Tenant as attorney-in-fact and to file one or more financing statements under the Iowa Uniform Commercial Code naming Tenant as Debtor and Landlord as

Secured Party and describing the collateral herein specified. Tenant consents to the financing statement being filed immediately after execution of this Lease.

4. **INPUT COSTS AND EXPENSES.** Tenant shall prepare the Real Estate and plant such crops in a timely fashion as may be directed by Landlord. Tenant shall only be entitled to pasture or till those portions of the Real Estate designated by Landlord. All necessary machinery and equipment, as well as labor, necessary to carry out the terms of this lease shall be furnished by and at the expense of the Tenant. The following materials, in the amounts required by good husbandry, shall be acquired by Tenant and paid for by the parties as follows:

	% Landlord	% Tenant
(1) Commercial Fertilizer	0	100
(2) Lime and Trace Minerals	0	100
(3) Herbicides	0	100
(4) Insecticides	0	100
(5) Seed	0	100
(6) Seed cleaning	0	100
(7) Harvesting and/or Shelling Expense	0	100
(8) Grain Drying Expense	0	100
(9) Grain Storage Expense	0	100
(10) Other	0	100

5. **PROPER HUSBANDRY; HARVESTING OF CROPS; CARE OF SOIL, TREES, SHRUBS AND GRASS.** Tenant shall farm the Real Estate in a manner consistent with good husbandry, seek to obtain the best crop production that the soil and crop season will permit, properly care for all growing crops in a manner consistent with good husbandry, and harvest all crops on a timely basis. In the event Tenant fails to do so, Landlord reserves the right, personally or by designated agents, to enter upon the Real Estate and properly care for and harvest all growing crops, charging the cost of the care and harvest to the Tenant, as part of the Rent. Tenant shall timely control all weeds, including noxious weeds, weeds in the fence rows, along driveways and around buildings throughout the premises. Tenant shall comply with all terms of the conservation plan and any other required environmental plans for the leased premises. Tenant shall do what is reasonably necessary to control soil erosion including, but not limited to, the maintenance of existing watercourses, waterways, ditches, drainage areas, terraces and tile drains, and abstain from any practice which will cause damage to the Real Estate.

6. **ENVIRONMENTAL.**

a. Landlord. To the best of Landlord's knowledge to date:

i) Neither Landlord nor, Landlord's former or present tenants, are subject to any investigation concerning the premises by any governmental authority under any applicable federal, state, or local codes, rules, and regulations pertaining to air and water quality, the handling, transportation, storage, treatment, usage, or disposal of toxic or hazardous substances, air emissions, other environmental matters, and all zoning and other land use matters.

ii) Any handling, transportation, storage, treatment, or use of toxic or hazardous substances that has occurred on the premises has been in compliance with all applicable federal, state, and local codes, rules, and regulations.

iii) No leak, spill release, discharge, emission, or disposal of toxic or hazardous substances has occurred on the premises.

iv) The soil, groundwater, and soil vapor on or under the premises is free of toxic or hazardous substances except for chemicals (including without limitation fertilizer, herbicides, insecticides) applied in conformance with good farming methods, applicable rules and regulations and the label directions of each chemical.

Landlord shall hold Tenant harmless against liability for removing solid waste disposal sites existing at the execution of this Lease, with the exception that Tenant shall be liable for removal of solid waste disposal sites to the extent that the Tenant created or contributed to the solid waste disposal site at any time.

Landlord shall assume liability and shall indemnify and hold Tenant harmless against any liability or expense arising from any condition which existed, whether known or unknown, at the time of execution of the lease which is not a result of actions of the Tenant or which arises after date of execution but which is not a result of actions of the Tenant.

Landlord shall disclose in writing to Tenant the existence of any known wells, underground storage tanks, hazardous waste sites, and solid waste disposal sites. Disclosure may be provided by a properly completed groundwater hazard statement to

be supplemented if changes occur.

b. Tenant. Tenant shall comply with all applicable environmental laws concerning application, storage and handling of chemicals (including, without limitation, herbicides and insecticides) and fertilizers. Tenant shall apply any chemicals used for weed or insect control at levels not to exceed the manufacturer's recommendation for the soil types involved. Farm chemicals shall not be stored on the premises for more than one year. Farm chemicals for use on other properties shall not be stored on this property. Chemicals stored on the premises shall be stored in clearly marked, tightly closed containers. No chemicals or chemical containers will be disposed of on the premises. Application of chemicals for agricultural purposes per manufacturer's recommendation shall not be construed to constitute disposal.

Tenant shall employ all means appropriate to insure that well or ground water contamination does not occur, and shall be responsible to follow all applicator's licensing requirements. Tenant shall install and maintain safety check valves for injection of any chemicals and/or fertilizers into an irrigation system (injection valve only, not main well check valve). Tenant shall properly post all fields (when posting is required) whenever chemicals are applied by ground or air. Tenant shall haul and spread all manure on appropriate fields at times and in quantities consistent with environmental protection requirements. Tenant shall not dispose of waste oil, tires, batteries, paint, other chemicals or containers anywhere on the premises. Solid waste shall not be disposed of on the premises. Dead livestock shall not be buried on the premises. Tenant shall not use waste oil as a means to suppress dust on any roads on or near the premises. No underground storage tanks, except human waste septic systems that meet current codes, rules, and regulations, shall be maintained on the premises.

Tenant shall immediately notify Landlord of any chemical discharge, leak, or spill which occurs on premises. Tenant shall assume liability and shall indemnify and hold Landlord harmless for any claim or violation of standards which results from Tenant's use of the premises. Tenant shall assume defense of all claims, except claims resulting from Landlord's negligence, in which case each party shall be responsible for that party's defense of any claim. After termination, Tenant shall remain liable for violations which occurred during the term of this Lease.

7. **TERMINATION OF LEASE.** This Lease shall automatically renew upon expiration from year-to-year, upon the same terms and conditions unless either party gives due and timely written notice to the other of an election not to renew this Lease. If renewed, the tenancy shall terminate on March 1 of the year following, provided that the tenancy shall not continue because of an absence of notice in the event there is a default in the performance of this Lease. All notices of termination of this Lease shall be as provided by law.

8. **POSSESSION AND CONDITION AT END OF TERM.** At the termination of this Lease, Tenant will relinquish possession of the Real Estate to the Landlord. If Tenant fails to do so Tenant agrees to pay Landlord **$9.00** per day, as liquidated damages until possession is delivered to Landlord. At the time of delivery of the Real Estate to Landlord, Tenant shall assure that the Real Estate is in good order and condition, and substantially the same as it was when received by Tenant at the commencement of this Lease, excusable or insurable loss by fire, unavoidable accidents and ordinary wear, excepted.

9. **LANDLORD'S RIGHT OF ENTRY AND INSPECTION.** In the event notice of termination of this Lease has been properly served, Landlord may enter upon the Real Estate or authorize someone else to enter upon the Real Estate to conduct any normal tillage or fertilizer operation after Tenant has completed the harvesting of crops even if this is prior to the date of termination of the lease. Landlord may enter upon the Real Estate at any reasonable time for the purpose of viewing or seeding or making repairs, or for other reasonable purposes.

10. **VIOLATION OF TERMS OF LEASE.** If Tenant or Landlord violates the terms of this Lease, the other may pursue the legal and equitable remedies to which each is entitled. Tenant's failure to pay any Rent when due shall cause all unpaid Rent to become immediately due and payable, without any notice to or demand upon Tenant.

11. **REPAIRS.** Tenant shall maintain the fences on the leased premises in good and proper repair. Landlord shall furnish necessary materials for repairs that Landlord deems necessary within a reasonable time after being notified of the need for repairs. Tenant shall haul the materials to the repair site without charge to Landlord.

12. **EXPENSES INCURRED WITHOUT CONSENT OF LANDLORD.** No expense shall be incurred for or on account of the Landlord without first obtaining Landlord's written authorization. Tenant shall take no action that might cause a mechanic's lien to be imposed upon the Real Estate.

13. **NO AGENCY.** Tenant is not an agent of the Landlord.

14. **ATTORNEY FEES AND COURT COSTS.** If either party files suit to enforce any of the terms of this Lease, the prevailing party shall be entitled to recover court costs and reasonable attorneys' fees.

15. **CHANGE IN LEASE TERMS.** The conduct of either party, by act or omission, shall not be construed as a material alteration of this Lease until such provision is reduced to writing and executed by both parties as addendum to this Lease.

16. **CONSTRUCTION.** Words and phrases herein, including the acknowledgment, are construed as in the singular or plural and as the appropriate gender, according to the context.

17. **NOTICES.** The notices contemplated in this Lease shall be made in writing and shall either be delivered in person, or be mailed in the U.S. mail, certified mail to the recipient's last known mailing address, except for the notice of termination set forth in Section 9, which shall be governed by the Code of Iowa.

18. **ASSIGNMENT.** Tenant shall not assign this Lease or sublet the Real Estate or any portion thereof without prior written authorization of Landlord.

DATED: January 16th, 2017

TENANT:

Justin A. Hoffman

Justin A. Hoffman

LANDLORD:

CITY OF CARROLL, IOWA

By:_____
Eric P. Jensen, Mayor

By:_____
Laura A. Schaefer, City Clerk

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