

AGREEMENT

This Agreement ("Agreement") is made and voluntarily entered into by the undersigned, J. M. Seed, LLC d/b/a Miller Seed Company of Lincoln (collectively "Service Provider") and the City of Lincoln, Nebraska ("Owner") regarding access, indemnification, and seeding on certain City property.

1. Description of Property.

1.1 Owner shall permit Service Provider to occupy and use for agricultural and related purposes approximately forty-two (42) acres located in part on the property legally described as Lots 1, 2, 32 and 33, Irregular Tracts located in the Northwest Quarter of Section 13, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska called Stevens Creek Park at North 98th Street and Adams Street, adjacent to Burns Park, as shown on Exhibit A, which is attached hereto and incorporated herein by this reference.

1.2 All of this property is hereinafter referred to as the "Property".

2. Term of Agreement.

2.1 The term of this Agreement shall be for approximately four (4) years from May ____, 2015 through April 30, 2019. The parties may renew for additional terms from one to four years as mutually agreed upon by the parties. Extension or renewal of this Agreement shall require execution of a new agreement or amendment by the parties.

2.2 Either party has the right to terminate this Agreement if the other party fails to perform as required in this Agreement. Termination rights under this section may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing upon giving the other party thirty (30) days written notice. City also has the right to terminate this Agreement for any reason for its own convenience with thirty (30) days written notice of the termination. Upon termination by City for convenience, City shall reimburse Service Provider for any approved and documented service completed and materials used on the Property up to the date of termination.

2.3 Service Provider shall not re-lease, sub-lease or assign this Agreement, or any part thereof, without consent of Owner.

2.4 Upon the termination of this Agreement or any renewals thereof, Service Provider agrees to leave planted grasses on Property in a mowed condition.

3. Compensation.

Consideration for this Agreement shall be the parties' respective covenants and contributions as provided hereunder. Service Provider's initial investment is estimated at \$1,500.00/acre for planting, drilling, seed, etc. In addition, annual expenses for herbicide application, weed management, pesticides, shredding, any other necessary management techniques, and harvest is anticipated to be \$600.00/acre. Thus, the annual cost for Service Provider for the first year is estimated to be \$88,200.00 and \$25,200.00 annually for each year after. In exchange, Service Provider shall have the right to harvest the seeds for its own profit and save City the expense of seeding and maintaining the Property for no cost to the City.

4. Service Provider Obligations.

4.1 Service Provider shall at its sole expense provide all material and labor for seeding/planting of Property with a single monoculture of Little Bluestem Native Grass only on the gold-shaded areas described as "Little Bluestem Seeding Area" shown on Exhibit A. Service Provider shall leave all other areas of the Property undisturbed. Service Provider shall leave a twenty foot (20') buffer on either side of the drainage channel as shown on Exhibit A. Service Provider shall furnish its labor and pay all its own costs, including any taxes, required to complete the services.

4.2 Service Provider shall harvest annually in late September and early October as dictated by plant growth and seed maturity. Service Provider shall provide for continued public access during the annual fall harvest as provided further herein. Service Provider should submit a phased harvest plan to the City operations coordinator for review and approval and coordination for public access and signage on an annual basis by September 1st of each year.

4.3 Service Provider shall shred and bale in the fourth (4th) quarter after the harvest.

4.4 Service Provider shall mow from road side to sixteen feet (16') back where allowable, at least four (4) times a year.

4.5 Per Section 6(f) of the Land and Water Conservation Act, public access to the Property shall be maintained and achieved through the development of a mowed walking path as shown on Exhibit A. Service Provider will mow out and maintain a minimum seventy-two inch (72") wide walking path during the growing season. Following harvest, Service Provider has the right to request a change to the layout and location of the walking path with Owner's approval. During harvest, at least one-half (1/2) of the Property shall remain open to public access, while the remaining area of the site has temporary restricted public access as designated by Service Provider on a site map displayed at the entry access point in the parking lot.

4.6 Service Provider shall be permitted to conduct any controlled and permitted burns as required for best management practice, typically to be done in the spring. Service Provider shall comply with all permitting requirements for the burns and be responsible for any damage done by the burns.

4.7 Service Provider will maintain the Property during said tenancy in as good condition and repairs as to the beginning, or as later improved, normal wear and depreciation from causes beyond Service Provider's control excepted. Service Provider shall utilize best management practices (BMPs) to maintain and manage the Property.

4.8 Service Provider will operate the Property in an efficient and husband-like manner, will conduct all prudent operations, including but not limited to, the plowing, seeding, cultivating, herbicidal and non-herbicidal weed and pest control, swathing, bailing and shredding seasonally, mowing pathways and harvesting at the proper time and in the proper manner include and any additional items guided by BMPs for healthy grass seed production.

4.9 Service Provider will keep in good condition all grass waterways, terraces, open ditches, and inlets and outlets of tile drains.

4.10 Service Provider will not commit waste on or damage to the Property and will use due care to prevent others from so doing.

4.11 No timber on the Property shall be removed or used for any purpose without the prior written consent of Owner.

4.12 Service Provider will permit Owner or Owner's agent to enter the Property at any reasonable time for repairs, improvements or inspection.

4.13 Service Provider will yield possession of the Property to Owner at the expiration of this Agreement without further notice.

4.14 Service Provider will prepare and keep adequate records of Service Provider's farming operations on the Property including but not limited to the type, amount and cost of all seeds planted, the type, amount and cost of all fertilizers, insecticides, herbicides and any other chemicals applied to the Property.

4.15 Service Provider shall submit an annual report of the activities, chemical applications, repairs, improvements and farm operations conducted during the year.

4.16 Service Provider, Service Provider's employees and agents shall, while on the Property, comply with all rules and regulations of the Owner regarding the Property, including, but not limited to, security and safety requirements. Service Provider shall apply for and obtain any and all necessary permits, certifications, licenses, variances, and approvals required by any applicable law or regulations that relate to the services and conduct all activities related to the services in a lawful manner.

4.17 Service Provider and its agents or designees shall be the only parties permitted to access Property under this Agreement unless written permission from City for additional contractors..

4.18 A waterway in Stevens Creek Park that was degrading has recently been protected and restored through a project in cooperation with the City's Public Works and Utilities Watershed Division and the Lower Platte South Natural Resources District. The waterway restoration required a 404 Permit from the Corps of Engineers and the approved plans for both the 404 Permit and the Storm Water Pollution Prevention Plan, which have been implemented, include seeding the channel slopes and a 20-foot buffer from the top of each bank with Type G native Prairie Mixture (per L.S.S. Ch 32), as shown on Exhibit A. Service Provider's use shall stay outside of this buffer zone and shall not impact it with seeding, equipment, or herbicide application in order to preserve the environmental features associated with this waterway and Stevens Creek (including 12 acres of riparian woodland along Stevens Creek). Service Provider shall access the east side of the waterway through the detention cell overflow ditch on the north side of the Property, in proximity to Adams Street. The Public Works and Utilities Watershed Division shall be monitoring the 404 Permit area and reporting on water quality/erosion control improvements during the term of this Agreement. Owner may make additional improvements to the waterway as may be required by the Corps of Engineers during the monitoring term of the 404 Permit.

5. Owner Obligations.

5.1 Owner warrants that it has the right to use the Property and will defend Service Provider's possession against any and all persons whomsoever.

5.2 Owner shall provide access to the Property to Service Provider during the term of this Agreement for Service Provider's use under the terms of this Agreement. Owner permits Service Provider the right to harvest the seeds for its sole profit during the term of this Agreement.

5.3 Owner agrees to timely review harvest plans, records, annual reports, and other documentation submitted by Service Provider as required by the Agreement and provide comment as necessary.

6. Mutual Conditions.

6.1 Time is of the essence of this Agreement.

6.2 The terms of this Agreement shall apply to the heirs, personal representatives, successors and assigns of both Owner and Service Provider in like manner as to the original parties.

6.3 This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement.

6.4 This Agreement may be amended only by written agreement of both parties.

6.5 This Agreement may not be assigned without the prior written consent of the both parties.

6.6 Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement and invalidity of any section of this Agreement shall not invalidate any other section thereof.

6.7 Service Provider shall be subject to audit per Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

6.8 Service Provider shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and Neb. Rev. Stat. § 48-1122, as amended.

7. Access Upon Breach.

7.1 Upon breach of Contract by either party, the other party shall have all rights of law, including forcible entry and retainer.

7.2 If Service Provider fails to carry out any provision of this Agreement, Owner may enter and take possession and Service Provider shall peaceably vacate the Property.

8. Hunting.

There shall be no hunting on Owner's Property nor shall Service Provider allow unauthorized access to the Property, without the written consent of the Owner.

9. Chemicals.

9.1 Service Provider shall, prior to usage, provide Owner with a list of all chemicals (fertilizers, herbicides, pesticides) to be used on the Property.

9.2 Owner may prohibit the use of any chemical which interferes with Owner's activities or future plans for the Property. Owner shall not prohibit use of chemical that Service Provider determines is BMP for the agricultural use, provided Service Provider meets all requirements as specified by the product label, the waterway is protected as per the requirements of Section 4.17 of this Agreement, and Service Provider otherwise complies with the requirements of this Agreement.

9.3 Service Provider shall be permitted to use such herbicides and pesticides applications as needed throughout the year to manage weeds and pests.

9.4 Service Provider shall be solely responsible for maintaining and managing weeds on the Property.

10. Indemnification and Insurance.

10.1 Service Provider is fully aware and understand the specific risks associated with this activity, including physical injury, and that this activity may be hazardous to Service Provider. Service Provider agrees to assume and accept the full risks associated with this activity

without limitation, or in the alternative waive all rights to notice of risks associated with this activity and any activities connected or associated with this activity, including any loss or damage to clothing and/or personal equipment; any mental and/or physical injuries, including illness, permanent and/or partial disability; severe social and/or economic loss; attorney's fees; and/or any other damages or loss which may result not only from his or her actions, inactions or negligence, but the actions, inactions or negligence of others, or in the condition of the Property or of any equipment used. Service Provider further assumes all the foregoing risks and accepts personal responsibility for all costs associated with the risks or injuries that the undersigned incurred or causes.

10.2 For and in consideration of this request and access being granted, Service Provider hereby waives and releases any and all rights Service Provider may have against the City, or any of its officers, agents, employees, successors and assigns to make claim for, sue for, or in any manner attempt to recover for any injury or damages that might result from Service Provider's use of Property. To the fullest extent permitted by law, Service Provider shall forever waive, release, indemnify, defend and hold harmless City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from Service Provider's or his or her agents' use of Property, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Service Provider, any contractor, subcontractor, or any person directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require Service Provider to indemnify or hold harmless Owner for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of Owner. Owner does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. The waivers and releases in this Agreement survive any termination or expiration of this Agreement.

10.3 Service Provider shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting Service Provider and City of Lincoln, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Service Provider and Service Provider's employees, or those directly or indirectly employed by Service Provider. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

1. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
2. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
3. Personal Injury Damage - \$1,000,000 each Occurrence; and
4. Contractual Liability - \$1,000,000 each Occurrence; and
5. Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
6. Medical Expenses (any one person) - \$10,000;
7. Fire Damage (any one fire) - \$100,000.

Service Provider shall provide a Certificate of Insurance for its General Liability Insurance with the City of Lincoln specifically named as an additional insured on the General Liability Insurance. Service Provider is required to provide City with thirty (30) days' notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement.

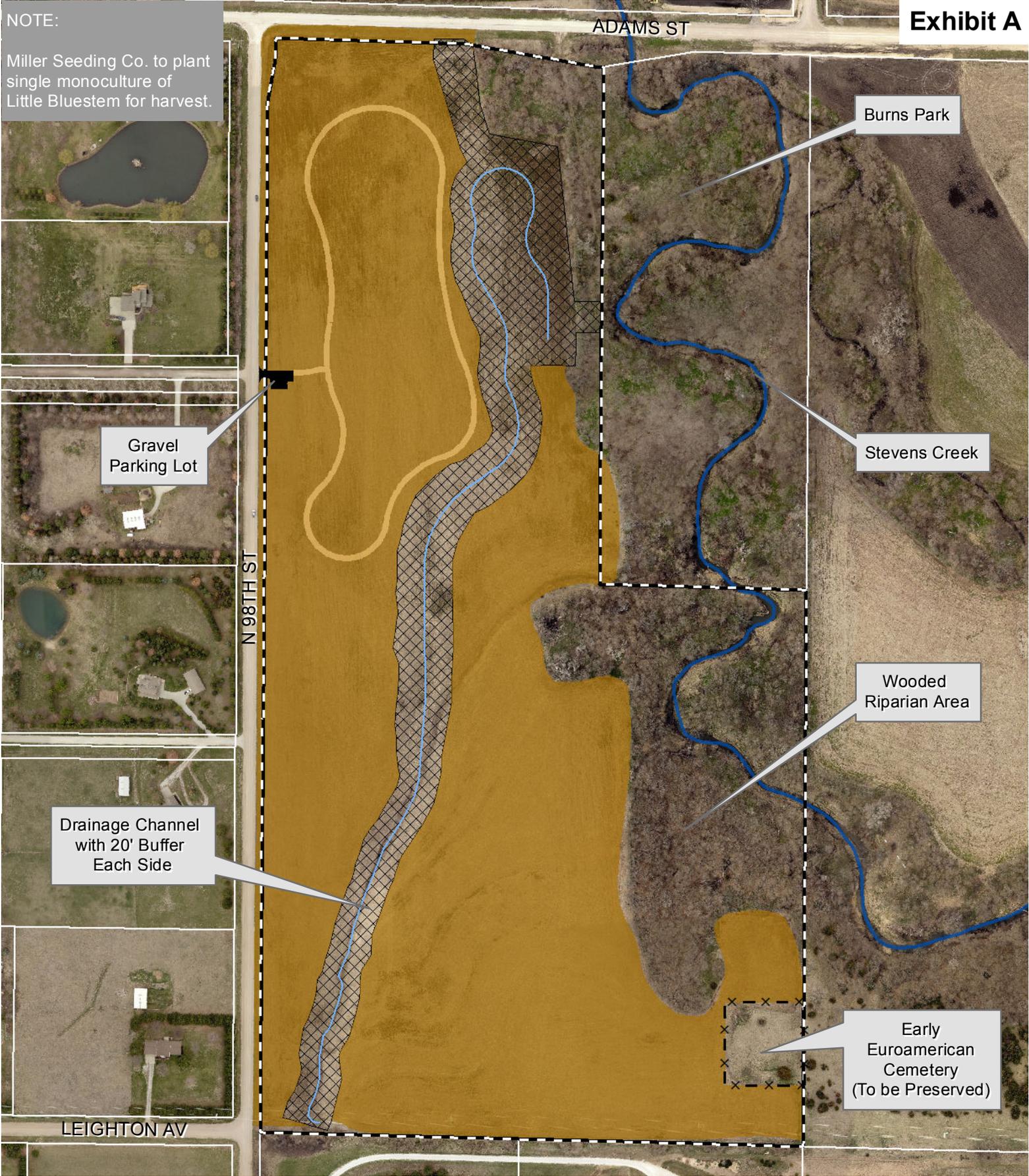
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ___ day of _____,
2015, by Chris Beutler, Mayor, on behalf of City of Lincoln, Nebraska.

Notary Public

NOTE:

Miller Seeding Co. to plant single monoculture of Little Bluestem for harvest.



-  Stevens Creek Park
-  Parcels
-  Little Bluestem Seeding Area
-  Drainage Channel 20' Buffer Each Side
-  Drainage Channel Alignment
-  Stevens Creek
-  Mowed Pathway
-  Fence



Seeding Agreement for Stevens Creek Park

1 inch = 300 feet

04-27-15