

**DEVELOPMENT AND PURCHASE AGREEMENT**

**by and between**

**THE CITY OF CEDAR RAPIDS, IOWA,**

**and**

**CARGILL, INCORPORATED**

**DEVELOPMENT AND PURCHASE AGREEMENT  
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## DEVELOPMENT AND PURCHASE AGREEMENT

THIS DEVELOPMENT AND PURCHASE AGREEMENT (the "Agreement"), is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019 by the **CITY OF CEDAR RAPIDS, IOWA**, having an office for the transaction of business at 101 First Street SE, Cedar Rapids, Iowa 52401 (the "City") and **CARGILL, INCORPORATED**, having an office for the transaction of business at 1710 16<sup>th</sup> St. SE, Cedar Rapids, Iowa 52401 and with principal offices and place of business at 15407 McGinty Road West, Wayzata, Minnesota 55391 (the "Developer").

### WITNESSETH:

WHEREAS, the City owns property located at the corner of Stewart Road and Otis Avenue SE, more particularly described in attached Exhibit 2.1 (the "Development Property"); and

WHEREAS, the Developer seeks to purchase the Development Property from the City in order to construct the Minimum Improvements as described in this Agreement; and

WHEREAS, on June 26, 2018 the City Council adopted Resolution No. 0779-06-18 setting public hearing and a notice was published on June 30, 2018, and a public hearing was held on July 10, 2018 on the possible disposition of the Development Property; and

WHEREAS, on July 10, 2018 the City Council adopted Resolution No. 0854-07-18 authorizing the continuation of the disposition of the Development Property and inviting proposals for redevelopment; and

WHEREAS, the Developer submitted the sole proposal to purchase and develop the Development Property; and

WHEREAS, on August 14, 2018 the City Council adopted Resolution No. 1057-08-18 accepting the proposal submitted by Cargill, Incorporated for the redevelopment of the Development Property, subject to approval of a development agreement and authorizing the City to negotiate a development agreement with the Developer for redevelopment and purchase of the Development Property; and

WHEREAS, City believes that the development and purchase of the Development Property proposed by the Developer and pursuant to this Agreement, and the fulfillment generally of this Agreement are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws for the Development Property under which the project is being undertaken.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

### ARTICLE I DEFINITIONS

#### Section 1.1. Definitions.

In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings:

- (a) Agreement means this Agreement and all exhibits hereto, as the same may be from time to time modified, amended or supplemented.
- (b) City means the City of Cedar Rapids, Iowa, or any successor to its functions.
- (c) Code means the Code of Iowa, 2018, as amended.

- (d) Construction Plans means the plans, specifications, drawings and related documents reflecting the construction to be performed by the Developer on the Development Property, approved by the City's Development Services Department.
- (e) County means the County of Linn, Iowa.
- (f) Developer means Cargill, Incorporated and its successors and assigns.
- (g) Developer Property means that property owned by the Developer located at the corner of Otis Road SE and Prairie Park Fishery Road as described in Exhibit 2.2 attached hereto, and which is to be conveyed to the City pursuant to the terms and conditions of this Agreement.
- (h) Development Property means that property owned by the City located at the corner of Stewart Road and Otis Avenue SE as described in Exhibit 2.1 attached hereto, and which is to be conveyed to the Developer pursuant to the terms and conditions of this Agreement.
- (i) Effective Date means the date this Agreement is executed by, and on behalf of the City of Cedar Rapids, Iowa.
- (j) Event of Default means any of the events described in *Section 10.1* of this Agreement.
- (k) Minimum Improvements shall mean the construction of a rail storage yard on the Development Property, together with all related site improvements, some of which are described and depicted in Exhibit 5.1 attached hereto.
- (l) Net Proceeds means any proceeds paid by an insurer to the Developer under a policy or policies of insurance required to be provided and maintained by the Developer pursuant to *Article VII* of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.
- (m) Project shall mean the construction of the Minimum Improvements on the Development Property, in accordance with this Agreement.
- (n) Unavoidable Delays means delays caused by acts or occurrences outside the reasonable control of the party claiming the delay including but not limited to weather not conducive to any required construction activities, storms, floods, fires, explosions or other casualty losses, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts of any federal, State or local governmental unit (other than the City) including the completion of the Environmental Review.

## **ARTICLE II CONVEYANCE OF THE DEVELOPMENT PROPERTY**

Upon Closing (as defined below), the City shall convey the Development Property to the Developer pursuant to the terms and conditions of this Agreement, including as follows:

### **Section 2.1. Sale and Purchase.**

City agrees to sell to the Developer, and the Developer agrees to purchase the Development Property as described in Exhibit 2.1, together with any easements and servient estates appurtenant thereto, but with such reservations and exceptions of title as are stated below and further subject to easements, covenants and conditions of record.

### **Section 2.2. Purchase Price.**

The Development Property shall be conveyed to the Developer in exchange for the terms, conditions and covenants contained herein, including the Developer's conveyance of the Developer Property and dedication of the easement(s) to the City, plus additional consideration of the greater of either the appraised dollar value as determined by an appraiser licensed as such in the State of Iowa and chosen upon agreement of both parties, or Eighty-Three Thousand Two Hundred Twenty Dollars and 00/100

(\$83,220.00) (the "Purchase Price"), all of which is agreed by the parties hereto to constitute good, lawful, sufficient, valid and adequate consideration. The Purchase Price shall be paid by Developer in full at the Closing by wire transfer of immediately available funds.

Section 2.3. Abstract of title.

Upon the Effective Date, the City shall promptly deliver an abstract of title to the Development Property to Developer for examination. Updating is at the expense of the Developer. The abstract shall show marketable title in City, free and clear of all liens, restrictions, and encumbrances (other than those identified herein), in conformity with this Agreement, Iowa law, and title standards of the Iowa State Bar Association. The City shall make every reasonable effort to promptly perfect reasonable objections to title. If Closing is delayed due to City's inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten (10) days written notice to the other party. The abstract shall become the property of Developer upon conveyance of the Development Property and when the Purchase Price is paid in full to the City. The Developer will be responsible for costs related to Attorney Title Opinion, or title insurance. City shall pay the costs of the recording of the Quit Claim Deed and any additional abstracting and title work due to any act or omission of City.

Section 2.4. Possession.

Developer shall be entitled to possession of the Development Property upon the Closing. From and after the Effective Date and until transfer of title, the Developer shall have access to the Development Property to perform environmental testing, site analysis, and inspection of the site as provided under *Section 2.16*.

Section 2.5. Taxes.

City shall pay taxes, if any, for the fiscal year ending 6/30/2019 and pro rata (through the date of possession) portion of the taxes for the fiscal year ending 6/30/2020 and any unpaid taxes thereon payable in prior years. Developer shall pay any taxes not assumed by City in accordance with this *Section 2.5* and all subsequent taxes before same become delinquent. Any proration of taxes shall be based upon the taxes for the year currently payable unless the parties state otherwise.

Section 2.6. Special Assessments.

City shall pay the special assessments, if any, which are a lien on the Development Property as of the Effective Date. Developer, except as above stated, shall pay all subsequent special assessments and charges, before they become delinquent.

Section 2.7. Risk of Loss

The City shall be responsible for all risk of loss or damage to the Development Property prior to Closing. In the event of substantial damage to or destruction of the Development Property prior to Closing, Developer shall have the option to terminate this Agreement. Developer acknowledges that it is buying the Development Property "as is and where is."

Section 2.8. Liens.

The City shall not allow any mechanics' lien to be imposed upon or foreclosed against the Development Property prior to Closing. After Closing, the Developer shall not allow any mechanics' lien to be imposed upon or foreclosed against the Development Property unless within thirty days of filing the lien is paid or bonded against or contested in good faith.

Section 2.9. Time is of the essence.

Time is of the essence in this Agreement.

Section 2.10. Exceptions to Warranties of Title.

The warranties of title in any Deed made pursuant to this contract shall be without reservation or qualification EXCEPT: (a) zoning ordinances which in the reasonable opinion of Developer or Developer's counsel do not prohibit or restrict the use and enjoyment by Developer of the Development Property and (b) easements, covenants and conditions of record, including any contemplated herein which are attached hereto in Exhibit 2.10.

Section 2.11. Deed.

The City shall convey the Development Property to the Developer by Quit Claim Deed, subject to all easements, covenants and conditions of record, and as except otherwise identified herein and delivered at Closing. The Developer shall pay the transfer tax, if any.

Section 2.12. Closing and Possession.

Subject to Unavoidable Delays, the City and Developer shall close no later than (i) March 15, 2020 or (ii) by such other date as the parties shall mutually agree upon in writing ("Closing"). Possession shall be given to Developer immediately after Closing.

Section 2.13. Conditions Precedent to Conveyance of the Development Property.

The City's obligation to convey title and possession of the Development Property to the Developer, and the Developer's obligations to purchase the Development Property, shall be subject to satisfaction of the following conditions precedent on the date of Closing:

- (a) The Developer shall be in in material compliance with all the terms and provisions of this Agreement; and
- (b) The Developer shall have furnished the City with evidence, in a form satisfactory to the City (such as a letter of commitment from a bank or other lending institution), that the Developer has firm commitments for construction and acquisition and permanent financing for the Project in an amount sufficient, with the equity commitments, to complete the Project in conformance with the Construction Plans, or the City shall have received such other evidence of the Developer's financial ability as in the reasonable judgment of the City is required; and
- (c) The Developer conducting and being satisfied with the due diligence described in *Section 2.16*.
- (d) The Developer shall execute and deliver to the City, the Acceptance of Conditions forms outlining conditions for the approval for the Administrative Site Development Plan, through the Development Services Department.
- (e) The Developer shall have furnished the City with an executed perpetual conservation easement, including an easement exhibit, on the remainder of the Development Property not subject to the recent rezoning for the railyard in the form set forth in Exhibit 2.13 in a form that is suitable for recording immediately after the recording of the Quit Claim Deed.
- (f) The Developer shall reimburse the City in the amount of \$32,800 for the cost previously incurred by the City for the purpose of planting prairie grass on the portion of the Development Property subject to the recent rezoning for the railyard. The Developer shall pay this amount to the City at Closing.

Section 2.14 Additional Conditions.

The following conditions shall survive Closing and execution and delivery of the Quit Claim Deed:

- (a) The Developer shall maintain existing where possible, and plant new where necessary no later than July 31, 2020, and maintain all prairie grass, on the portion of the development property not subject to the recent rezoning for the railyard using plant species and practices approved by the City of Cedar Rapids including a minimum 3-year maintenance plan.

- (b) The Developer shall reimburse the City up to an amount not to exceed \$400,000 for the establishment of a railroad "Quiet Zone" at Otis Road next to the Prairie Park Fishery. The actual reimbursement amount shall be based on actual costs expended by the City. The Developer shall reimburse the City within sixty (60) days of receiving a written request for reimbursement from the City which sets forth the actual costs expended by the City.
- (c) The Developer shall organize and hold four collaborative public meetings with adequate notice, which shall be conducted at various points during the project starting during the engineering design of the Minimum Improvements and throughout the construction of the railyard. The organization, format, and content of the meetings shall be subject to the City's approval.

**Section 2.15    Condition of Property.**

Developer acknowledges and agrees that it is acquiring the Development Property "where is" and "as is." The City shall disclose, in writing at the request of the Developer all facts or claims known to the City concerning Hazardous Material (as hereinafter defined) upon the Development Property. "*Hazardous Material*" means:

- (a) any "*hazardous waste*" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder;
- (b) any "*hazardous substance*" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder;
- (c) any oil, petroleum products, and their byproducts; and
- (d) any substance that is or becomes regulated by any federal, state or local governmental authority.

**Section 2.16.   Due Diligence.**

Following the Effective Date and prior to Closing, the Developer will be provided access to the Development Property for purposes of making whatever site inspections, tests, or other examinations to determine that the Development Property is acceptable to it. All such testing, surveys and examination will be at Developer's costs and at its own risk. Developer will protect, defend, indemnify, keep and save the City and its officers and agents harmless from any and all claims or damages arising out of these activities. If Developer closes on the Development Property, the parties agree that such action will be deemed to be a statement of the Developer that the Developer has determined to its own satisfaction that it has received all facts or claims known to the City concerning Hazardous Materials on the Development Property, and that no environmental cleanup is required with respect to any of the Development Property.

**Section 2.17.    General Provisions.**

The provisions of this Article VI shall apply to and bind the successors in interest of the parties. The provisions of this Article VI shall survive the Closing.

**Section 2.17.    No Real Estate Agent or Broker.**

Except for CBRE, Inc. who represents Cargill, neither party has used the services of a real estate agent or broker in connection with this transaction.

**ARTICLE III  
UTILITY EASEMENTS**

**Section 3.1.   Utility Easements of the Development Property.**

The Developer shall conform with and grant the easements for sanitary sewer and overhead electrical transmission lines to the City as described and depicted in Exhibit 2.10. The Developer shall grant and



record an easement for the future location of a water transmission line to the City in a form acceptable to the City. More specifically these easements include:

- (a) 35' easement (10' in addition to the existing 25' easement) required for 24" sanitary sewer main that runs parallel to the Railroad property line;
- (b) 40' easement for water transmission line being designed to be located along property line adjacent to Cole Street; and
- (c) 15' easement for transmission lines along east section of property for overhead electrical facilities

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

##### **Section 4.1. Representations and Warranties of the City.**

The City makes the following representations and warranties:

- (a) The City is a municipal corporation and political subdivision organized under the provisions of the Constitution and the laws of the State of Iowa and has the power to enter into this Agreement and carry out its obligations hereunder.
- (b) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing.

##### **Section 4.2. Representations and Warranties of Developer.**

The Developer makes the following representations and warranties:

- (a) The Developer is duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State of Iowa and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.
- (b) This Agreement has been duly and validly authorized, executed and delivered by the Developer and, assuming due authorization, execution and delivery by the City, is in full force and effect and is a valid and legally binding instrument of the Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.
- (c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the certificate of organization or operating agreement of the Developer or of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.
- (d) There are no actions, suits or proceedings pending or threatened against or affecting the Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of the Developer or which in any manner raises any questions affecting the validity of the Agreement or the Developer's ability to perform its obligations under this Agreement.

- (c) The City has not received any notice from any local, State or federal official that the activities of the Developer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). The Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State or federal environmental law, regulation or review procedure applicable to the Development Property, and the Developer is not currently aware of any violation of any local, State or federal environmental law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.
- (e) The Developer has firm commitments for the construction and permanent financing for the Project to substantially complete the Project in accordance with the Minimum Improvements contemplated in this Agreement.

## **ARTICLE V CONSTRUCTION OF MINIMUM IMPROVEMENTS**

### **Section 5.1. Construction of Minimum Improvements.**

The Developer shall cause the Minimum Improvements to be constructed on the Development Property in conformance with the Construction Plans. The Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than, or different from, the scope and scale of the Minimum Improvements as detailed and outlined in Exhibit 5.1, and shall in no event require a total investment of less than \$6,500,000 including hard and soft construction cost.

### **Section 5.2. Construction Plans.**

- (a) The Developer shall have the Construction Plans submitted to the City before construction of the Minimum Improvements has commenced. The City may review the Construction Plans only to determine that such plans are consistent with this Agreement, including the construction of the Minimum Improvements. If the City objects to any of the Construction Plans it must notify the Developer within thirty (30) days of the City's receipt of such plans of City's objections, specifying in detail the reasons for City's objections.
- (b) The Construction Plans must:
  - (i) conform to the terms and conditions of this Agreement;
  - (ii) conform to all applicable federal, State and local laws, ordinances, rules and regulations and City permit requirements; and
  - (iii) be adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements.

Any such approval of the Construction Plans pursuant to this *Section 5.2* shall constitute approval for the purposes of this Agreement only and shall not be deemed to constitute approval or waiver by the City with respect to any building, fire, zoning or other ordinances or regulations of the City, and shall not be deemed to be sufficient plans to serve as the basis for the issuance of a building permit. The site plans submitted for the Development Property on behalf of the Developer to the Development Services Department of the City shall be adequate to serve as the Construction Plans, if such site plans are approved by Development Services.

- (c) Approval of the Construction Plans by the City shall not relieve the Developer of any obligation to comply with the terms and provisions of this Agreement, or the provision of applicable federal, State and local laws, ordinances and regulations, nor shall approval of the Construction Plans by the City be deemed to constitute a waiver of any Event of Default.

- (d) Approval of Construction Plans hereunder is solely for purposes of this Agreement, and shall not constitute approval for any other City purpose nor subject the City to any liability for the Minimum Improvements as constructed.
- (e) Developer shall not make changes to the Construction Plans without approval by the City.

**Section 5.3. Commencement and Completion of Construction.**

- (a) Subject to Unavoidable Delays or in the event the Closing is delayed, the Developer shall cause the construction of the Minimum Improvements to be commenced (i) on September 1, 2020 in accordance with Exhibit 5.1 attached hereto; or (ii) by such other date as the parties shall mutually agree upon in writing by an amendment to this Agreement. For purposes of this *Section 5.3*, construction commencement shall be conclusively evidenced by site preparation work.
- (b) Subject to Unavoidable Delays or in the event the Closing is delayed, the Developer shall cause the construction of the Minimum Improvements to be completed (i) no later than June 1, 2021 in accordance with Exhibit 5.1 attached hereto; or (ii) by such other date as the parties shall mutually agree upon in writing by an amendment to this Agreement.
- (c) Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. All work with respect to the Minimum Improvements shall be in conformity with the Construction Plans approved by the building official or any amendments thereto as may be approved by the building official.

**Section 5.4. Certificate of Completion.**

- (a) Upon written request of the Developer, submitted in its sole discretion, after issuance by the City of a certificate of occupancy for the Minimum Improvements, the City shall provide the Developer with either:
  - (i) the Certificate of Completion, the form of which is attached hereto as Exhibit 5.4, in recordable form; or
  - (ii) a written statement that shall set forth in adequate detail those measures or acts that will be necessary for the Developer to take or perform in order to obtain the Certificate of Completion.
- (b) If the City shall refuse or fail to provide a written statement in accordance with the provisions of this Section 5.4, the City shall, within thirty (30) days after written request for the Certificate of Completion by the Developer, furnish the Developer with a Certificate of Completion. Such Certificate of Completion shall be a conclusive determination of satisfactory completion and termination of the covenants and conditions of this Agreement with respect to all of the obligations of the Developer under this Agreement to construct the Minimum Improvements. The Certificate of Completion shall be recorded in the office of the Linn County, Iowa Recorder.

**ARTICLE VI  
CONVEYANCE OF THE DEVELOPER PROPERTY**

Upon execution of this Agreement, the Developer shall convey the Developer Property to the City pursuant to the terms and conditions of this Agreement, including as follows:

**Section 6.1. Sale and Purchase.**

In consideration of One Dollar (\$1.00) and other good, adequate and valuable consideration, including the terms and conditions of this Agreement, Developer agrees to sell to the City, and the City agrees to purchase the Developer Property as described in Exhibit 2.2, together with any easements and servient

estates appurtenant thereto, but with such reservations and exceptions of title as are stated below and further subject to easements, covenants and conditions of record.

Section 6.2. Purchase Price.

The Developer Property shall be conveyed to the City for One Dollar (\$1.00) and in exchange for the terms, conditions and covenants contained herein, including the City's sale of the Development Property to the Developer, all of which are agreed by the parties hereto to constitute good, lawful, sufficient, valid and adequate consideration acknowledged by both parties.

Section 6.3. Abstract of title.

Upon execution of this Agreement, the Developer shall promptly submit an updated abstract of title at the cost of the Developer for the Developer Property to the City for examination. The abstract shall show marketable title in the Developer, free and clear of all liens, restrictions, and encumbrances (other than those identified herein), in conformity with this Agreement, Iowa law, and title standards of the Iowa State Bar Association. The Developer shall make every reasonable effort to promptly perfect reasonable objections to title. If Closing is delayed due to the Developer's inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten (10) days written notice to the other party. The abstract shall become the property of the City upon Closing and when the purchase price is paid in full. The City will be responsible for costs related to an Attorney Title Opinion, or title insurance. Developer shall pay the costs of the recording of the General Warranty Deed, in the form attached hereto as Exhibit 6.3, and any additional abstracting and title work due to any act or omission of the Developer.

Section 6.4. Possession.

City shall be entitled to possession of the Developer Property upon the Closing. From and after the Effective Date, City shall have access to the Developer Property to perform environmental testing, site analysis, and inspection of the site as provided under *Section 6.15*.

Section 6.5. Taxes.

Developer shall pay taxes, if any, for the fiscal year ending 6/30/2019 and pro rata (through the date of possession) portion of the taxes for the fiscal year ending 6/30/2020 and any unpaid taxes thereon payable in prior years. City shall pay any taxes not assumed by the Developer and all subsequent taxes before same become delinquent. Any proration of taxes shall be based upon the taxes for the year currently payable unless, the parties state otherwise.

Section 6.6. Special Assessments.

Developer shall pay the special assessments, if any, which are a lien on the Developer Property as of the Effective Date. The City, except as above stated, shall pay all subsequent special assessments and charges, before they become delinquent.

Section 6.7. Risk of Loss.

The Developer shall be responsible for all risk of loss or damage to the Developer Property prior to Closing. In the event of substantial damage to or destruction of the Developer Property prior to Closing, the City shall have the option to terminate this Agreement. The City acknowledges that it is buying the Developer Property "as is and where is."

Section 6.8. Liens.

The Developer shall not allow any mechanics' lien to be imposed upon or foreclosed against the Developer Property prior to Closing.

Section 6.9. Time is of the essence.

Time is of the essence in this Agreement.

Section 6.10. Exceptions to Warranties of Title.

The warranties of title in any Deed made pursuant to this contract shall be without reservation or qualification EXCEPT: (a) zoning ordinances which in the reasonable opinion of Developer or Developer's counsel do not prohibit or restrict the use and enjoyment by the City of the Developer Property and (b) easements, covenants and conditions of record, including any contemplated herein.

Section 6.11. Deed.

The Developer shall convey the Developer Property to the City by General Warranty Deed, subject to all easements, covenants and conditions of record, and as except otherwise identified herein and delivered at Closing. The Developer shall pay the transfer tax, if any. The Developer shall provide a Groundwater Hazard Statement and, if required, a Declaration of Value statement.

Section 6.12. Closing and Possession.

Subject to Unavoidable Delays, the City and Developer shall close no later than (i) March 15, 2020 or (ii) by such other date as the parties shall mutually agree upon in writing ("Closing"). Possession shall be given to the City immediately after Closing.

Section 6.13. Conditions Precedent to Conveyance of the Developer Property.

The Developer's obligation to convey title and possession of the Developer Property to the City, and the City's obligations to purchase the Developer Property, shall be subject to satisfaction of the following conditions precedent on the date of Closing:

- (a) The City shall be in material compliance with all the terms and provisions of this Agreement; and
- (b) The City conducting and being satisfied with the due diligence described in Section 6.16.

Section 6.14. Additional Conditions

The following conditions shall survive Closing and execution and delivery of the General Warranty Deed:

- (a) The Developer shall reimburse the City in the amount necessary to cover the expenses incurred by the City for the purpose of planting prairie grass on the Developer Property and for the expenses incurred by the City for maintenance of the prairie planting for a period of 3 years to commence after the completion of planting activities. The actual reimbursement amount shall be based on the actual costs expended by the City.

Section 6.15. Condition of Property.

The City acknowledges and agrees that is acquiring the Developer Property "where is" and "as is." The Developer shall disclose, in writing at the request of the City all facts or claims known to the Developer concerning Hazardous Material (as hereinafter defined) upon the Developer Property. "*Hazardous Material*" means:

- (e) any "*hazardous waste*" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder;
- (f) any "*hazardous substance*" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder;
- (g) any oil, petroleum products, and their byproducts; and

- (h) any substance that is or becomes regulated by any federal, state or local governmental authority.

**Section 6.16. Due Diligence.**

Following the Effective Date and prior to Closing, the City will be provided access to the Developer Property for purposes of making whatever site inspections, tests, or other examinations to determine that the Developer Property is acceptable to it. All such testing, surveys and examination will be at the City's costs and at its own risk. City will protect, defend, indemnify, keep and save the City of Cedar Rapids and its officers and agents harmless from any and all claims or damages arising out of these activities. If the City closes on the Developer Property, the parties agree that such action will be deemed to be a statement of the City that the City has determined to its own satisfaction that it has received all facts or claims known to the Developer concerning Hazardous Materials on the Developer Property, and that no environmental cleanup is required with respect to any of the Developer Property.

**Section 6.17. General Provisions.**

The provisions of this Article VI shall apply to and bind the successors in interest of the parties. The provisions of this Article VI shall survive the Closing.

**Section 6.18. No Real Estate Agent or Broker.**

Except for CBRE, Inc. who represents Developer, neither party has used the services of a real estate agent or broker in connection with this transaction.

**ARTICLE VII  
INSURANCE**

**Section 7.1. Insurance Requirements.**

- (a) The Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements (and, from time to time at the request of the City, furnish the City with proof of payment of premiums on):
  - (i) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis", in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy;
  - (ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) with limits against bodily injury and property damage of not less than \$500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and
  - (iii) Worker's compensation insurance, with statutory coverage.
- (b) Upon completion of construction with issuance of the final certificate of occupancy with respect to the Minimum Improvements, the Developer, or subsequent owners, shall maintain, or cause to be maintained, at its cost and expense (and from time to time at the request of the City shall furnish proof of the payment of premiums on) insurance as follows:
  - (i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limitation the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, explosion, water damage, demolition cost, debris removal, and collapse in an amount

not less than the full insurable replacement value of the Minimum Improvements, but any such policy may have a deductible amount of not more than \$50,000. Any deductible amount shall be the responsibility of the Developer. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior consent thereto in writing by the City. The term "full insurable replacement value" shall mean the actual replacement cost of the Minimum Improvements (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items) and equipment, and shall be determined from time to time at the request of the City, but not more frequently than once every three years, by an insurance consultant or insurer selected and paid for by the Developer and approved by the City.

- (ii) Comprehensive general public liability insurance and automobile liability insurance, including personal injury liability for injuries to persons and/or property, including any injuries resulting from the operation of automobiles or other motorized vehicles on or about the Development Property, in the minimum amount for each occurrence and for each year of \$1,000,000.
  - (iii) Such other insurance, including worker's compensation insurance respecting all employees of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of its liability for worker's compensation.
- (c) All insurance required by this *Article VII* to be provided prior to the sale of the Development Property shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. The Developer will deposit annually with the City copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this *Article VII*, each policy shall contain a provision that the insurer shall not cancel or modify it without giving written notice to the Developer and the City at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer shall furnish the City evidence satisfactory to the City that the policy has been renewed or replaced by another policy conforming to the provisions of this *Article VII*, or that there is no necessity therefore under the terms hereof. In lieu of separate policies, the Developer may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein, in which event the Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.
- (d) The Developer agrees to notify the City immediately in the case of damage exceeding \$100,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. Net Proceeds of any such insurance shall be paid directly to the Developer, and the Developer, will forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as they existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Developer will apply the Net Proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof. The Developer shall complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by the Developer for such purposes are sufficient.

## **ARTICLE VIII**

### **COVENANTS OF THE DEVELOPER**

#### Section 8.1. Covenants of the Developer.

Following issuance of the Certificate of Completion with respect to the Minimum Improvements, the Developer agrees with the City as follows:

- (a) Maintenance of Properties. The Developer will maintain, preserve and keep its properties (whether owned in fee or a leasehold interest), including but not limited to the Minimum Improvements, in good repair and working order, ordinary wear and tear accepted, and from time to time will make all necessary repairs, replacements, renewals and additions.
- (b) Books and Records. The Developer will keep at all times proper books of record and account in which full, true and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of the Developer at the Project in accordance with generally accepted accounting principles, consistently applied throughout the period involved, and the Developer will provide reasonable protection against loss or damage of such books of record and account.
- (c) Compliance with Laws. In its use and occupancy of the Project, the Developer will comply with all laws, rules and regulations relating to its businesses, other than laws, rules and regulations the failure to comply with which or the sanctions and penalties resulting therefrom, would not have a material adverse effect on the business, property, operations, or condition, financial or otherwise, of the Developer.
- (d) Non-Discrimination. In operating the Minimum Improvements, the Developer shall not discriminate against any tenant based on race, creed, color, sex, national origin, age or disability. The Developer shall ensure that tenants and or any employees at the Project are treated during employment, without regard to their race, creed, color, sex, national origin, age or disability.

### **ARTICLE IX INDEMNIFICATION**

#### Section 9.1. Release and Indemnification Covenants.

- (a) The Developer releases the City and the governing body members, officers, agents, servants and employees thereof (the “indemnified parties”) from, covenants and agrees that the indemnified parties shall not be liable for, and agrees to indemnify, defend and hold harmless the indemnified parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.
- (b) Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the indemnified parties, the Developer agrees to protect and defend the indemnified parties, now or forever, and further agree to hold the indemnified parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from:
  - (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by the Developer against the City to enforce its rights under this Agreement), or
  - (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Minimum Improvements, or
  - (iii) any hazardous substance or environmental contamination located in or on the Development Property.
- (c) The indemnified parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about



the Minimum Improvements due to any act of negligence of any person, other than any act of negligence on the part of any such indemnified party or its officers, agents, servants or employees.

- (d) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.
- (e) The provisions of this *Article IX* shall survive the termination of this Agreement.

## **ARTICLE X REMEDIES**

### **Section 10.1. Events of Default Defined.**

The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement, any one or more of the following events:

- (a) Failure by the Developer to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement;
- (b) Failure by the Developer to cause the construction of the Minimum Improvements to be commenced and completed pursuant to the terms, conditions and limitation of this Agreement and as set forth in the Construction Plans approved by the City as provided for in Section 5.2 ;
- (c) Failure by the Developer to obtain construction and permanent financing to complete the Minimum Improvements pursuant to the terms, conditions and limitations of this Agreement;
- (d) The Developer shall:
  - (i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or
  - (ii) allow a mechanic’s lien to be imposed on the Development Property after Closing unless within thirty (30) days of filing the lien is paid or bonded against or contested in good faith; or
  - (iii) make an assignment for the benefit of its creditors; or
  - (iv) admit in writing its inability to pay its debts generally as they become due; or
  - (v) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer or of the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against the Developer, and shall not be discharged within ninety (90) days after such appointment, or if the Developer shall consent to or acquiesce in such appointment;
- (e) Any representation or warranty made by the Developer in this Agreement, or made by the Developer in any written statement or certificate furnished by the Developer pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof.

### **Section 10.2. Remedies on Default.**

Whenever any Event of Default referred to in *Section 10.1* of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after (except in the case of an Event of Default under subsections (d) or (e) of said *Section 10.1*) the giving of thirty (30) days' written notice by the City to the Developer of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and the Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

- (a) The City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement; or
- (b) The City may terminate this Agreement; or
- (c) The City may withhold the Certificate of Completion; or
- (d) The City may withhold the final certificate of occupancy; or
- (e) The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

**Section 10.3. No Remedy Exclusive.**

No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 10.4. No Implied Waiver.**

In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

**Section 10.5. Agreement to Pay Attorneys' Fees and Expenses.**

Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefore, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

## **ARTICLE XI MISCELLANEOUS**

**Section 11.1. Conflict of Interest.**

The Developer represents and warrants that, to their best knowledge and belief after due inquiry, no officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has

had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 11.2. Notices and Demands.

A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (a) In the case of the Developer, is addressed or delivered personally to the Developer at 1710 16<sup>th</sup> Street SE, Cedar Rapids, Iowa 52401, Attn: Cedar Rapids Facility Manager, with copy to Cargill, Incorporated, Law / Attn: CSSTNA Lawyer, 15407 McGinty Road West, MS-24, Wayzata, MN 55391; and
- (b) In the case of the City, is addressed to or delivered personally to the City at City Hall, 101 First Street SE, Cedar Rapids, Iowa 52401, Attn: City Manager;

or to such other designated individual or officer or to such other address as either party shall have furnished to the other in writing in accordance herewith.

Section 11.3. Titles of Articles and Sections.

Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.4. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 11.5. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 11.6. Entire Agreement.

This Agreement and the exhibits hereto reflect the entire agreement between the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 11.7. Successors and Assigns.

This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 11.8. Memorandum of Agreement.

The parties agree to execute and record a Memorandum of Development and Purchase Agreement, in substantially the form attached as Exhibit 11.8, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The City shall pay all costs of recording.

Section 11.9. Assignment and Transfer.

As security for the obligations of the Developer under this Agreement, the Developer represents and agrees that prior to the Termination Date (as defined below), the Developer will maintain its existence

as a corporation and will not wind up or otherwise dispose of all or substantially all of its assets or assign its interest in this Agreement to any other party unless:

- (a) the transferee partnership, corporation, limited liability company or individual assumes in writing all of the obligations of the Developer under this Agreement; and
- (b) the City consents thereto in writing in advance, not to be unreasonably withheld, conditioned or denied if Developer establishes that the successor has comparable qualifications, financing and operating abilities of the Minimum Improvements. Notwithstanding the foregoing, however, or any other provision of this Agreement, the City agrees that the Developer without having to obtain the consent of the City:
  - (i) May lease any portion of the Minimum Improvements to third party tenants as contemplated in this Agreement;
  - (ii) May pledge and/or assign any and/or all of its assets for financing the construction of the Minimum Improvements;

Should Developer seek the City's consent to any action related to any request for pledge, assignment, or other transfer, the Developer shall pay all of the City's reasonable costs and expenses in reviewing such request and acting upon it, including attorneys' fees.

#### Section 11.10. Termination Date.

Except as may be specifically provided herein, the provisions of this Agreement shall terminate and be of no further force or effect on or as of the date the Certificate of Completion is provided to the Developer by the City (the "Termination Date").

#### Section 11.11. Amendment; Waiver.

This Agreement may not be amended, waived or modified in any respect unless the same shall be in writing and signed by all parties. No waiver by a party of any default by another party shall constitute a waiver of any other breach or default by another party, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give another party any contractual right by custom, estoppel, or otherwise.

#### Section 11.12. Authority.

Each of the undersigned represents that he/she is authorized to execute this Agreement on behalf of the parties hereto and further authorized to bind each of the parties to this Agreement and to the rights and obligations contained herein.

#### Section 11.13. Performance by City.

Developer acknowledges and agrees that all of the obligations of the City under this Agreement shall be subject to, and performed by the City in accordance with, all applicable statutory, common law or constitutional provisions and procedures consistent with the City's lawful authority.

#### Section 11.14. No Third Party Beneficiaries.

No rights or privileges of any party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

#### Section 11.15. Severability.

If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby and the parties shall thereupon amend this Agreement to legally and most closely embody the spirit and intent of the invalid provisions.

[End of document text, signature page follows]

DRAFT

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its City Manager and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer has caused this Agreement to be duly executed in its name by its Manager all on or as of the day first above written.

(SEAL)

CITY OF CEDAR RAPIDS, IOWA

By: \_\_\_\_\_  
Jeffrey A. Pomeranz, City Manager

ATTEST:

By: \_\_\_\_\_  
Amy Stevenson, City Clerk

STATE OF IOWA                     )  
  ) ss  
COUNTY OF LINN                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me a Notary Public in and for said County, personally appeared Jeffrey A. Pomeranz and Amy Stevenson to me personally known, who being duly sworn, did say that they are the City Manager and City Clerk, respectively of the City of Cedar Rapids, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council and said City Manager and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for State of Iowa  
My Commission Expires: \_\_\_\_\_

**CARGILL, INCORPORATED**

By: \_\_\_\_\_  
Jim Fritz  
AVP, Global Capital Excellence and Engineering Leader and Authorized Representative

STATE OF IOWA                    )  
  ) ss  
COUNTY OF LINN                )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared Jim Fritz, to me personally known, who, being by me duly sworn, did say that he is the AVP of Cargill, Incorporated and that said instrument was signed on behalf of said corporation; and acknowledged said instrument to be the free act and deed of said corporation by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for State of Iowa  
My Commission Expires: \_\_\_\_\_

**EXHIBIT 2.1**  
**LEGAL DESCRIPTION OF**  
**DEVELOPMENT PROPERTY**

**DEVELOPMENT PROPERTY**

Parcel A, Plat of Survey No. 2275 as recorded in Book 10133 Page 156 of the Linn County, Iowa Recorder on June 22, 2018.



**EXHIBIT 2.2**  
**LEGAL DESCRIPTION OF**  
**DEVELOPER PROPERTY**

**DEVELOPER PROPERTY**

Lots 2 and 3, “Auditor’s Plat No. 212, Linn County, Iowa”, lying Northerly of the right-of-way of the Chicago and Northwestern Railway and Southerly of the Public Highway, subject to public highway.

Lot 1 of “Auditor’s Plat No. 212, Linn County, Iowa”, lying Northeasterly of the Northerly line of the Chicago & Northwestern Railroad Company’s right of way, subject to the public highway.

DRAFT

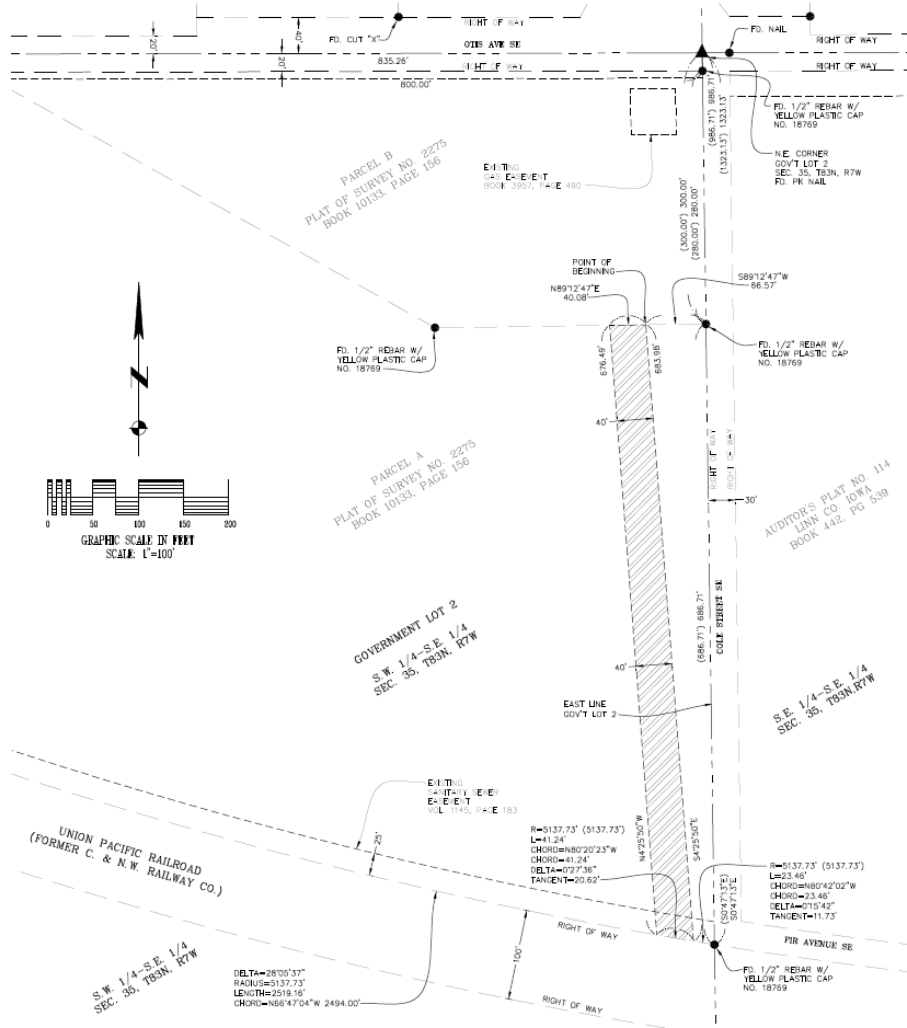
**EXHIBIT 2.10**  
**EASEMENTS OF THE DEVELOPMENT PROPERTY**

[exhibit drawings on following pages]

DRAFT



EXHIBIT A  
**WATER MAIN EASEMENT**  
 PART OF PARCEL A, PLAT OF SURVEY NO. 2275  
 CEDAR RAPIDS, LINN COUNTY, IOWA



Requestor: CARGILL, INC.

Proprietor: CITY OF CEDAR RAPIDS, IOWA

Engineer: HALL & HALL ENGINEERS, INC.  
 1860 BOYSON ROAD  
 HIAWATHA, IOWA 52233  
 1-319-362-9548

SURVEY WORK  
 PERFORMED:  
 5/14/18

**SURVEY LEGEND**

- FOUND 1/2" REBAR W/ YPC #11310
- ( ) RECORDED AS
- EASEMENT LINE
- EXISTING LOT LINE
- 1/4 - 1/4 SECTION LINE

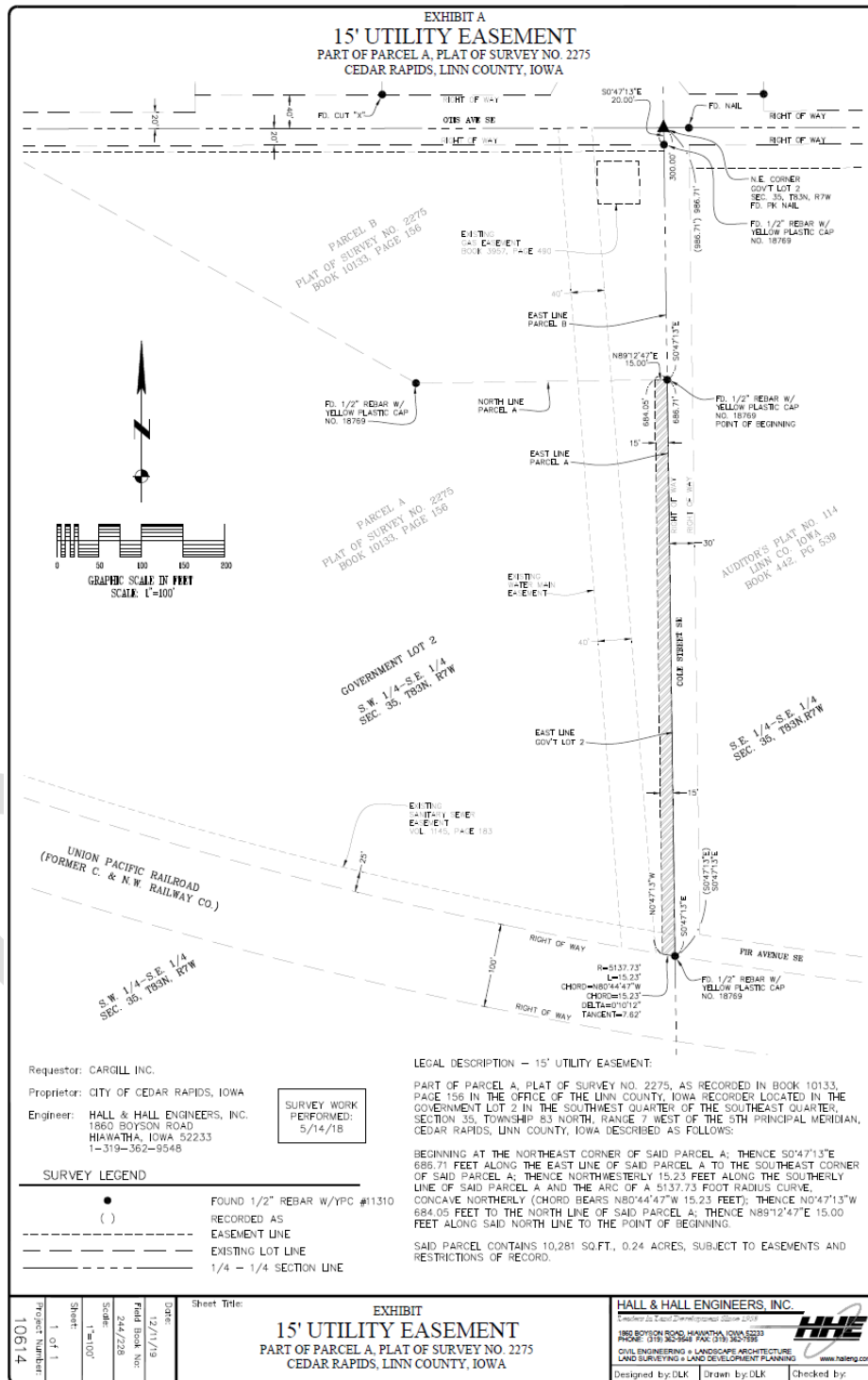
**LEGAL DESCRIPTION - WATER MAIN EASEMENT:**

PART OF PARCEL A, PLAT OF SURVEY NO. 2275, AS RECORDED IN BOOK 10133, PAGE 156 IN THE OFFICE OF THE LINN COUNTY, IOWA RECORDER LOCATED IN THE GOVERNMENT LOT 2 IN THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER, SECTION 35, TOWNSHIP 83 NORTH, RANGE 7 WEST OF THE 5TH PRINCIPAL MERIDIAN, CEDAR RAPIDS, LINN COUNTY, IOWA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID PARCEL A; THENCE S89°12'47"W 66.57 FEET ALONG THE NORTH LINE OF SAID PARCEL A TO THE POINT OF BEGINNING; THENCE S4°25'50"E 683.98 FEET TO THE SOUTHERLY LINE OF SAID PARCEL A; THENCE NORTHWESTERLY 41.24 FEET ALONG SAID SOUTHERLY LINE AND THE ARC OF A 5137.73 FOOT RADIUS CURVE, CONCAVE NORTHERLY (CHORD BEARS N80°20'23"W 41.24 FEET); THENCE N4°25'50"E 678.49 FEET TO THE NORTH LINE OF SAID PARCEL A; THENCE N89°12'47"E 40.08 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 0.63 ACRES, SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

Project Number: 10614	Sheet: 1 of 1	Date: 12/11/19	Scale: 1" = 100'	Field Book No: 244/228	Drawn by: DLK	Checked by:
Sheet Title: <b>EXHIBIT</b> <b>WATER MAIN EASEMENT</b> PART OF PARCEL A, PLAT OF SURVEY NO. 2275 CEDAR RAPIDS, LINN COUNTY, IOWA					HALL & HALL ENGINEERS, INC. 1860 BOYSON ROAD, HIAWATHA, IOWA 52233 PHONE: (319) 362-9548 FAX: (319) 362-9599 CIVIL ENGINEERING • LANDSCAPE ARCHITECTURE LAND SURVEYING • LAND DEVELOPMENT PLANNING Designed by: DLK Drawn by: DLK Checked by:	



**EXHIBIT 2.13**  
**AGREEMENT FOR ENVIRONMENTAL COVENANTS**

DRAFT

**Prepared By:** City of Cedar Rapids, 101 First Street SE, Cedar Rapids, Iowa 52401 (319) 286-5041

**Return To:** Bill Micheel, City Hall, 101 First Street SE, Cedar Rapids, Iowa 52401

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**AGREEMENT FOR ENVIRONMENTAL COVENANTS**

**GRANTED BY**

**CARGILL, INCORPORATED**

**TO**

**CITY OF CEDAR RAPIDS, IOWA**

**DECEMBER 17, 2019**

For the Legal Description of the Property subject to this Agreement, see **Attachment A**, Page A-1

This Agreement is an environmental covenant executed pursuant to Chapter 455I of the Code of Iowa, as amended.

## AGREEMENT FOR ENVIRONMENTAL COVENANTS

THIS AGREEMENT FOR COVENANTS AND RESTRICTIONS (the "Agreement"), made on or as of December 17<sup>th</sup>, 2019, is executed by the **CARGILL, INCORPORATED** (the "Grantor") in favor of the **City of Cedar Rapids, Iowa**, (the "Holder").

WITNESSETH:

WHEREAS, the Holder and Grantor entered into that certain Development and Purchase Agreement on December \_\_\_\_, 2019 (the "Development Agreement"), pertaining to the real property which is the subject of this Agreement and legally described in Exhibit A attached hereto (the "Conservation Easement Area") and hereby made a part hereof; and

WHEREAS, pursuant to the Development Agreement and subject to the terms and conditions of the Development Agreement, the Grantor agreed to impose certain environmental covenants on the Development Property in favor of the Holder to ensure the Conservation Easement Area remains and continues to be used as an outdoor, recreational, and natural amenity to enhance and foster an appreciation of the natural environment.

NOW, THEREFORE, in consideration of the premises and for other valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

**1. DEFINITIONS.** As used in this Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:

(a) Agreement means this Agreement and all exhibits hereto, as the same may be from time to time modified, amended or supplemented.

(b) Development Agreement means the Development Agreement by and between the City of Cedar Rapids and Cargill, Incorporated.

(c) Conservation Easement Area means the property legally described in Exhibit A attached hereto, including any existing improvements thereon and any improvements contemplated to be constructed under the terms of the Development Agreement.

(d) Grantor means the Cargill, Incorporated, an Delaware corporation.

(e) Holder means the City of Cedar Rapids, Iowa.

(f) Right of Access means the right of the Holder to access the Development Property as provided in paragraph 3, below.

**2. COVENANTS and RESTRICTIONS.** Pursuant to the Development Agreement and in order to maintain and preserve the character and condition of the Conservation Easement Area, Grantor, as the current titleholder of the Conservation Easement Area, does hereby adopt and subject the Conservation Easement Area to the following covenants, conditions and restrictions (the "Covenants and Restrictions"):

(a) The Conservation Easement Area shall be owned and maintained by the Grantor, which is a private, for-profit corporation; and



(b) The Conservation Easement Area shall be used and operated primarily for any one or more of the following purposes and no other primary land use shall be permitted on the Conservation Easement Area:

(i) Visual and noise mitigation between a railyard and residential zoning districts, in the form of an earthen berm and landscaping; or

(ii) Any other use or purpose that is consistent with the uses identified in the Agreement and approved by the Holder.

**3. RIGHT OF ACCESS--MONITORING.** For as long as this Agreement remains in effect, the Holder shall have right to enter upon and access the Conservation Easement Area reasonable times and upon reasonable notice in order to monitor compliance with this Agreement.

**4. TERMS AND CONDITIONS.** The following terms and conditions shall apply to the Covenants and Restrictions and the Right of Access:

(a) Environmental Covenant. This Agreement is intended to be an environmental covenant executed pursuant to Chapter 455I of the Code of Iowa (2019), as amended.

(b) Run With the Land. The Grantor hereby declares its express intention that the Covenants and Restrictions and the Right of Access shall be deemed to run with the Conservation Easement Area and shall pass to and be binding upon the Grantor's successors in title including any purchaser, grantee, owner or lessee of any portion of the Conservation Easement Area and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Conservation Easement Area and any other person or entity having any right, title or interest therein (subject to the written consent of the Holder to any transfer by Grantor). Each and every contract, deed or other instrument hereafter executed covering or conveying the Conservation Easement Area or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth or incorporated by reference in such contract, deed or other instrument, and any grantee, successor, assignee, transferee or other person or entity acquiring any interest in the Conservation Easement Area or any portion thereof shall conclusively be held to have acquired such interest in the Conservation Easement Area or any portion thereof subject to the obligations of such covenants, regardless of whether or not such covenants and restrictions are set forth or referred to, or specifically agreed to be performed by any such transferee, in any such contract, lease, conveyance, agreement or other such instrument.

(c) Perpetual. The Covenants and Restrictions are intended to be perpetual.

(d) Non-Exclusive. The Right of Access shall be a non-exclusive right that shall exist as long as the Conditions and Restrictions exist and have effect. The Right of Access shall not be appurtenant to any other real property but shall be a personal right in favor of the Holder.

(e) Amendments. The Covenants and Restrictions and the Right of Access may be amended at any time upon the agreement of the Grantor and the Holder. Any amendments shall be in writing, signed by the Grantor and Holder and shall be recorded in the office of the Recorder for Linn County, Iowa.

5. **BURDEN AND BENEFIT.** The Grantor and the Holder hereby acknowledge and agree that it is their mutual understanding and intent that the burden of the Covenants and Restrictions may render the Developer's legal interest in the Conservation Easement Area less valuable as a result of the restrictions created thereby. Further, the Grantor and the Grantee also acknowledge and agree that it is their mutual understanding and intent that the Covenants and Restrictions directly benefit the Conservation Easement Area by (i) enhancing and increasing the enjoyment and use of the Conservation Easement Area by members of the public, (ii) making possible the use of the Conservation Easement Area consistent with the uses allowed under the Covenants and Restrictions, and (iii) furthering the public purposes for which the Holder's disposition of the Conservation Easement Area was made.

6. **EVENTS OF DEFAULT; REMEDIES.** If the Grantor defaults in the performance or observance of any of the Covenant and Restrictions or the Right of Access, and if such default remains uncured for a period of sixty (60) days after notice thereof shall have been given by the Holder to the Grantor, then the Holder may declare that the Grantor or subsequent owner of the Conservation Easement Area is in default hereunder and may take, at its option, any one or more of the actions provided for under Chapter 455I to enforce the rights granted under this Agreement. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the Holder to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

7. **RECORDING.** The Grantor shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in such manner and in such places as the Holder may reasonably request, and shall pay all fees and charges incurred in connection therewith. The original recorded Agreement shall be returned to the Holder after it has been recorded.

8. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Iowa.

9. **NOTICES.** Any notice required to be given hereunder shall be given by registered or certified mail at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto:

Holder: City of Cedar Rapids, Iowa  
101 First Street SE  
Cedar Rapids, Iowa 52401  
Attn: Community Development Director

**With a copy to:**

City of Cedar Rapids, Iowa  
101 First Street SE  
Cedar Rapids, Iowa 52401  
Attn: Holder Attorney

Grantor: Cargill, Incorporated  
1710 16<sup>th</sup> Street SE  
Cedar Rapids, Iowa 52403  
Attn: Dan Pulis, Plant Manager

**10. SEVERABILITY.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

**11. COUNTERPARTS.** This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

**12. SUCCESSORS AND ASSIGNS.** All of the rights and obligations set forth herein shall be binding upon and inure to the burden and benefit of the parties hereto and their respective successors and assigns.

[end of document text, signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Covenants and Restrictions to be executed by their duly authorized officers, all as of the date first above written.

(SEAL)

**CITY OF CEDAR RAPIDS, IOWA**

By: \_\_\_\_\_  
JEFFREY A. POMERANZ  
City Manager

ATTEST:

By: \_\_\_\_\_  
AMY STEVENSON  
City Clerk

STATE OF IOWA     )  
                              ) ss  
COUNTY OF LINN    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me a Notary Public in and for said County, personally appeared Jeffrey A. Pomeranz and Amy Stevenson to me personally known, who being duly sworn, did say that they are the City Manager and City Clerk, respectively of the City of Cedar Rapids, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council and said City Manager and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for State of Iowa  
My Commission Expires:\_\_\_\_\_

**CARGILL, INCORPORATED**

By: \_\_\_\_\_

Jim Fritz

AVP, Global Capital Excellence and Engineering Leader and Authorized Representative

STATE OF IOWA       )  
                                  ) ss  
COUNTY OF LINN    )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ at 1710 16<sup>th</sup> Street SE, Cedar Rapids, Iowa 52403 and that said instrument was signed on behalf of said organization; and acknowledged said instrument to be the free act and deed of said Company by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for State of Iowa

My Commission Expires: \_\_\_\_\_

**ATTACHMENT A  
LEGAL DESCRIPTION**

The legal description of the Conservation Easement Area that is subject to the Covenants and Conditions in the Agreement for Environmental Covenants, by and between the Cargill, INC ("Grantor") and the City of Cedar Rapids, Iowa ("Holder") is the following property located in Linn County, Iowa:

PART OF GOVERNMENT LOT 2, SECTION 35, TOWNSHIP 83 NORTH RANGE 7 WEST OF THE 5<sup>TH</sup> PRIME MERIDIAN, CEDAR RAPIDS, LINN COUNTY, IOWA DESCRIBED AS FOLLOWS:

PARCEL A OF PLAT OF SURVEY #2275 EXCEPTING ALL OF THE FOLLOWING:

PART OF PARCEL A, PLAT OF SURVEY NO. 2275 AS RECORDED IN BOOK 10133, PAGE 156 IN THE OFFICE OF THE LINN COUNTY, IOWA RECORDER AND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 83 NORTH, RANGE 7 WEST OF THE 5TH PRINCIPAL MERIDIAN, CEDAR RAPIDS, LINN COUNTY, IOWA DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL A; THENCE N89°55'30"E 83.15 FEET ALONG THE NORTH LINE OF SAID PARCEL A; THENCE SOUTHEASTERLY 168.85 FEET ALONG THE ARC OF A 5087.73 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY (CHORD BEARS S54°25'58"E 168.84 FEET); THENCE S79°43'08"E 1989.44 FEET; THENCE S0°47'13"E 511.55 FEET TO THE NORTHEASTERLY RIGHT OF WAY OF THE UNION PACIFIC RAILROAD (FORMERLY THE CHICAGO & NORTHWESTERN RAILWAY COMPANY); THENCE NORTHWESTERLY 2410.54 FEET ALONG SAID NORTHEASTERLY RIGHT OF WAY AND THE ARC OF A 5137.73 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY (CHORD BEARS N66°10'44"W 2388.48 FEET) TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 16.70 ACRES, SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

**EXHIBIT 5.1  
MINIMUM IMPROVEMENTS AND  
CONSTRUCTION SCHEDULE**

The Minimum Improvements consist of the construction of railyard with twelve (12) tracks, small office building, vegetated earthen berm and landscaping to provide a visual and noise buffer on all sides. All improvements shall be in accordance with said City Code standards, and in compliance with Construction Plans signed, sealed by an engineer(s) and architect licensed in the State of Iowa.

**TIMELINE FOR MINIMUM IMPROVEMENTS**

<b><u>Activity to be Completed</u></b>	<b><u>Date</u></b>
Commence Site Preparation & Utilities	09/01/2020
Issuance of Permits for Construction	08/15/2020
Commence Building Construction	12/01/2020
Project Completion	06/01/2021

[site plan on following pages]







**EXHIBIT 5.4**  
**FORM OF CERTIFICATE OF COMPLETION**

**CERTIFICATE OF COMPLETION**

WHEREAS, the **CITY OF CEDAR RAPIDS, IOWA** (the “City”), and **CARGILL, INCORPORATED** (the “Developer”) did on or about the \_\_\_\_ day of \_\_\_\_\_, 2019, make, execute and deliver, each to the other, a Development Agreement (the “Agreement”), wherein and whereby the Developer agreed, in accordance with the terms of the Agreement to cause the development of certain real property described as follows:

*Parcel A, Plat of Survey No. 2275 as recorded in Book 10133 Page 156 of the Linn County, Iowa Recorder on June 22, 2018.*

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated the Developer to cause the construction of certain Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, the Developer has to the present date performed said covenants and conditions insofar as they relate to the construction of said Minimum Improvements in a manner deemed by the City to be in conformance with the approved building plans to permit the execution and recording of this certification.

NOW, THEREFORE, pursuant to Section 5.4 of the Agreement, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of the Developer, and its successors and assigns, to cause the construction of the Minimum Improvements on the Development Property have been completed and performed by the Developer and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder of Linn County is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions of said Agreement with respect to the construction of the Minimum Improvements on the Development Property.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

**CITY OF CEDAR RAPIDS**

By: \_\_\_\_\_  
Jeffrey A. Pomeranz, City Manager

ATTEST:

By: \_\_\_\_\_  
Amy Stevenson, City Clerk

STATE OF IOWA                    )  
  ) ss  
COUNTY OF LINN                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me a Notary Public in and for said County, Jeffrey A. Pomeranz personally appeared and Amy Stevenson to me personally known, who being duly sworn, did say that they are the City Manager and City Clerk, respectively of the City of Cedar Rapids, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council and said City Manager and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for State of Iowa  
My Commission Expires: \_\_\_\_\_

**EXHIBIT 6.3**  
**FORM OF DEEDS FOR DEVELOPER PROPERTY**

DRAFT

SPACE ABOVE FOR RECORDER

Preparer Information: City of Cedar Rapids Attorney, City Hall, 101 First Street SE, Cedar Rapids, Iowa 52401 (319) 286-5025

Taxpayer Information: City of Cedar Rapids Controller-Auditor, City Hall, 101 First Street SE, Cedar Rapids, Iowa 52401 (319) 286-5006

Return to: City of Cedar Rapids City Clerk, City Hall, 101 First Street SE, Cedar Rapids, Iowa 52401 (319) 286-5060

**WARRANTY DEED  
(CORPORATE GRANTOR)**

For the consideration of one dollar (\$1.00) and other valuable consideration **CARGILL, INCORPORATED**, a Delaware corporation ("**Grantor**"), does hereby convey to the **CITY OF CEDAR RAPIDS, IOWA**, the following described real estate in Linn County, Iowa ("**Grantee**"):

Lots 2 and 3, "Auditor's Plat No. 212, Linn County, Iowa", lying Northerly of the right-of-way of the Chicago and Northwestern Railway and Southerly of the Public Highway, subject to public highway.

(the "Property")

This land is being acquired for public purposes and a Declaration of Value is not required. Iowa Code Sec. 428A.1.

Grantor does hereby covenant with grantee and successors in interest, that grantor holds the real estate by title in fee simple; that it has good and lawful authority to sell and convey the real estate; the Property is free and clear of all liens and encumbrances except as may be above stated; and grantor does covenant to warrant and defend the Property unto Grantee against the claims of all persons claiming by, through or under Grantor, but against none other..

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number and as masculine or feminine gender, according to the context.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

CARGILL, INCORPORATED:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF IOWA, COUNTY OF LINN) ss:

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by  
\_\_\_\_\_ as \_\_\_\_\_ of Cargill, Incorporated.

\_\_\_\_\_

SPACE ABOVE FOR RECORDER

Preparer Information: City of Cedar Rapids Attorney, City Hall, 101 First Street SE, Cedar Rapids, Iowa 52401 (319) 286-5025

Taxpayer Information: City of Cedar Rapids Controller-Auditor, City Hall, 101 First Street SE, Cedar Rapids, Iowa 52401 (319) 286-5006

Return to: City of Cedar Rapids City Clerk, City Hall, 101 First Street SE, Cedar Rapids, Iowa 52401 (319) 286-5060

**WARRANTY DEED  
(CORPORATE GRANTOR)**

For the consideration of one dollar (\$1.00) and other valuable consideration **CARGILL, INCORPORATED**, a Delaware corporation (“**Grantor**”), does hereby convey to the **CITY OF CEDAR RAPIDS, IOWA**, the following described real estate in Linn County, Iowa (“**Grantee**”):

Lot 1 of “Auditor’s Plat No. 212, Linn County, Iowa” lying Northeasterly of the Northerly line of the Chicago & Northwestern Railroad Company’s right of way, subject to the public highway

(the “Property”)

This land is being acquired for public purposes and a Declaration of Value is not required. Iowa Code Sec. 428A.1.

Grantor does hereby covenant with Grantee and successors in interest, that Grantors hold the real estate by title in fee simple; that it has good and lawful authority to sell and convey the real estate; the Property is free and clear of all liens and encumbrances except as may be above stated; and Grantor does covenant to warrant and defend the the Property unto Grantee against claims of all persons claiming by, through or under Grantor, but against none other. Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number and as masculine or feminine gender, according to the context.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CARGILL, INCORPORATED:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF IOWA, COUNTY OF LINN) ss:

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by \_\_\_\_\_ as \_\_\_\_\_ of Cargill, Incorporated.

State

\_\_\_\_\_  
Notary Public in and for said

DRAFT

**EXHIBIT 11.8**  
**FORM OF MEMORANDUM OF**  
**DEVELOPMENT AND PURCHASE AGREEMENT**

MEMORANDUM OF DEVELOPMENT AND PURCHASE AGREEMENT

WHEREAS, the **CITY OF CEDAR RAPIDS, IOWA** (the "City"), **CARGILL, INCORPORATED** (the "Developer"), did on or about the \_\_\_\_ day of \_\_\_\_\_, 2019, make, execute and deliver a Development and Purchase Agreement (the "Agreement"), wherein and whereby the Developer agreed, in accordance with the terms of the Agreement, to develop and purchase certain real property located within the City and within the Project Area and as more particularly described as follows:

*Parcel A, Plat of Survey No. 2275 as recorded in Book 10133 Page 156 of the Linn County, Iowa Recorder on June 22, 2018.*

(the "Development Property"); and

WHEREAS, the term of this Agreement shall commence on the \_\_\_\_ day of December, 2019, and terminate as forth in the Agreement; and

WHEREAS, the City and the Developer desire to record a Memorandum of the Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.
2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.
3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, City Hall, Cedar Rapids, Iowa.

[end of document text, signature pages follow]

IN WITNESS WHEREOF, the City and the Developer have executed this Memorandum of Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2019.



**CITY OF CEDAR RAPIDS, IOWA**

By: \_\_\_\_\_  
Jeffrey A. Pomeranz, City Manager

ATTEST:

By: \_\_\_\_\_  
Amy Stevenson, City Clerk

STATE OF IOWA                    )  
  ) SS  
COUNTY OF LINN                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me a Notary Public in and for said County, Jeffrey A. Pomeranz personally appeared and Amy Stevenson to me personally known, who being duly sworn, did say that they are the City Manager and City Clerk, respectively of the City of Cedar Rapids, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council and said City Manager and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for Linn County, Iowa  
My Commission Expires: \_\_\_\_\_

**CARGILL, INCORPORATED**

By: \_\_\_\_\_  
Jim Fritz  
AVP, Global Capital Excellence and Engineering Leader and Authorized Representative

STATE OF IOWA                    )  
  ) SS  
COUNTY OF LINN                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me a Notary Public in and for said County, Jim Fritz personally appeared and to me personally known, who being duly sworn, did say he is AVP of Cargill, Incorporated., created and existing under the laws of the State of Iowa, and that said instrument was signed on behalf of said Limited Liability Company and acknowledged said instrument to be the free act and deed of said Liability Company by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for Linn County, Iowa  
My Commission Expires: \_\_\_\_\_