Attachment 2

REAL ESTATE TRANSFER AND REMEDIATION AGREEMENT

THIS REAL ESTATE TRANSFER AND REMEDIATION AGREEMENT (this "Agreement") dated _____, 2024 (the "Effective Date"), is made and entered into by and between Rodney D. Rhoden, as Trustee of the Rodney D. Rhoden Trust dated December 23, 2011, including any amendments thereto ("Owner"), and the City of Council Bluffs, Iowa (the "City"). Owner and the City may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Owner is the sole owner of that certain unimproved real estate Parcel # 7444 12 451 004 described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, the Property is contaminated with hazardous substances such that it meets the definition of a brownfield site under 40 U.S.C. § 9601(39);

WHEREAS, the Environmental Protection Agency (the "EPA") provides certain federal financial assistance for revitalization for brownfield sites, including grants for cleanup (the "Brownfields Program");

WHEREAS, the EPA's Brownfield's Program includes Cleanup Grants, which provides funds to certain eligible entities for the costs associated with the cleanup of a brownfield site;

WHEREAS, the City meets the eligibility requirements for the Cleanup Grants as a Bona Fide Prospective Purchaser;

WHEREAS, the transfer of title to the Property to the City will permit the City to apply for the EPA's Cleanup Grant, which will be used to pay for the costs of remediation of the Property;

WHEREAS, following such remediation, or denial of the City's application for the Cleanup Grant, pursuant to the terms of this Agreement, the City will resell the Property to Owner for the same price the City purchased the Property from Owner;

WHEREAS, the remediation of the Property will benefit the City by allowing future development of the Property, which may spur economic activity in the area; and

WHEREAS, Owner desires to sell and the City desires to purchase the Property, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of and based upon the foregoing recitals and the mutual promises and agreements set forth herein, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. Transfer of Property. The City agrees to purchase, and Owner agrees to sell, the Property, including all rights of way, easements and appurtenances pertaining to the Property. The purchase price of the Property shall be One Hundred and No/100ths Dollars ($100.00) (the "Purchase Price"). The Purchase Price shall be payable by the City in immediately available funds on the Closing Date (as defined in Section 8 below).

2. Environmental Site Assessments. Prior to the Closing Date the City shall, at its expense, obtain a Phase I Environmental Site Assessment in accordance with the requirements of the EPA's Cleanup Grant. If necessary, the City may obtain a Phase II Environmental Site Assessment of the Property in accordance with the requirements of the EPA's Cleanup Grant.

3. Cleanup of the Property. The City hereby agrees, subject to approval of the EPA's Cleanup Grant, to remediate the environmental contamination of the Property in accordance with the terms of such grant. The City shall use reasonable efforts to comply with the intended timetable set forth on Exhibit "B" attached hereto and incorporated herein by this reference (the "Schedule"). The City shall perform all environmental remediation within the scope of the EPA's Cleanup Grant for which funding is offered or otherwise approved. For the duration of the time the City holds title to the Property, it shall regularly consult with Owner on all decisions regarding the application for the EPA's Cleanup Grant, the remediation of the Property pursuant thereto, and all other decisions with respect to the Property. Owner shall have the right to make the final determination with respect to the remediation of the Property; provided, however, that such determination must be made in accordance with the requirements of the EPA's Cleanup Grant. The City shall promptly notify Owner of all communications with the EPA and all contractors performing work on the Property. The City shall also provide periodic updates regarding the status of the remediation and its adherence to the Schedule.

4. Owner's Communication Obligations. Owner shall provide the City with all environmental documentation regarding the Property in Owner's possession and promptly respond to any questions posed by the City. Owner shall also consult with the City and its agents, employees, consultants, and contractors in good faith on all aspects of the remediation.

5. Representations and Warranties of Owner. Owner represents and warrants to the City:

(a) Owner has full authority and power to enter into this Agreement and to consummate the transactions contemplated herein. Neither the execution, delivery nor performance of this Agreement shall violate or constitute a breach of any existing agreement by Owner or, to Owner's actual knowledge, any applicable law, rule or regulation;

(b) To Owner's actual knowledge, there is no action, suit, proceeding or investigation pending or threatened before any agency, court or other governmental authority which would materially affect the Property or the operation thereof;

(c) There is no condemnation proceeding affecting the Property currently pending nor, to Owner's actual knowledge, is any such proceeding threatened;

(d) Owner has not received notice of any default or breach by Owner under any agreements, covenants, conditions, restrictions, rights-of-way, or easements which may affect the Property, and no such default or breach now exists to Owner's actual knowledge;

(e) Owner is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code, and at Closing Owner shall deliver to the City an affidavit or certificate to that effect satisfying the requirements of such Section;

(f) There are no outstanding options or rights of first refusal with any third-party to purchase the Property, or any portion thereof or interest therein.

All representations, warranties and covenants of Owner contained in this Agreement shall be true and complete as of the date of this Agreement and as of Closing. Owner hereby indemnifies and defends the City and holds the City harmless from the following and against any and all claims, actions, loss, cost, damage and expense (including reasonable attorney's fees) arising out of, resulting from, relating to, in the nature of or caused by the inaccuracy or beach by Owner of any of the representations, warranties and covenants contained in this Agreement.

6. Abstract and Title. Owner, at its expense, shall obtain and deliver to the City an abstract of title to the Property continued through the date of this Agreement, and the City shall thereafter deliver the same to its attorney for examination. Said abstract of title shall show merchantable title in Owner in conformity with this Agreement, Iowa law, and Title Standards of the Iowa State Bar Association. Within two (2) weeks after the City's receipt of said abstract of title, the City shall deliver to Owner written notice of any defects in Owner's title to the Property, and Owner shall make commercially reasonable efforts to promptly perfect title. The City shall pay the cost of any review of the abstract performed by the City's attorney. If Closing is delayed due to Owner's inability to provide marketable title, then 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 when the Purchase Price is paid in full.

7. Billboard Leases. The Parties acknowledge that the Property is currently subject to two billboard leases (the "Billboard Leases"). The Parties acknowledge and agree that the Billboard Leases and all rents, profits, and other receipts and revenues of any nature or kind arising from the Billboard Leases or the Property generally shall belong legally and beneficially to Owner and that the City has not legal or beneficial interest in such Billboard Leases, rents, profits, and other receipts and revenues. Owner may amend, modify, extend, renew, or take any other action regarding the Billboard Leases without the consent of the City. The tenants under the Billboard Leases shall communicate with and make payment directly to Owner. The City shall not, and shall cause all its employees, contractors and agents to not, damage or otherwise interfere with the visibility of the billboards subject to the Billboard Leases. The City shall indemnify, defend, and hold harmless Owner for any and all claims, demands, suits, proceedings, judgements, charges, liabilities, losses, damages, costs and expenses incurred or suffered by Owner caused by, arising

out of, or resulting from the Billboard Leases or the City's damage or interference with the billboards subject to the Billboard Leases. The City may not enter into any leases for the Property or any portion thereof or place any encumbrances upon the Property without the written consent of Owner.

8. Closing Date and the City's Conditions of Closing. The closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur on _____ __, 2024, or on such other date as the Parties may mutually agree in writing (the "Closing Date").

9. Conveyance of Property.

(a) At Closing, Owner shall execute and deliver to the City a special warranty deed (the "Deed") in recordable form, conveying to the City marketable fee simple title to the Property, free and clear of all liens and encumbrances except covenants, reservations, conditions, restrictions and easements of record.

(b) At Closing, the City shall execute and deliver to Owner all of the City documents necessary to close this transaction in accordance with the terms of this Agreement.

10. Possession. The City shall take possession of the Property on the Closing Date.

11. Prorations and Closing Costs.

(a) Owner shall be responsible for all real estate taxes assessed prior to the Closing, including assessed taxes which are not yet delinquent. It is the Parties understanding that the Property will not be subject to real estate taxes while title to the Property is held by the City.

(b) The cost of recording the Deed shall be the Owner's sole cost, with recording fees attributable to any other agreements and easements delivered and/or exchanged at Closing shared equally by the Parties.

12. Owner's Conditions to Closing. The following are conditions precedent to the obligation of Owner to sell the Property. The conditions shall be fully satisfied or may be waived by Owner on or before the Closing:

(a) Owner's receipt of the Purchase Price.

13. The City's Conditions to Closing. The obligation of the City to consummate the transactions contemplated hereunder shall also be subject to the fulfillment on or before the Closing of all of the following conditions, any or all of which may be waived by the City in its sole discretion:

(a) Owner shall have delivered to the City at the Closing all of the items required to be delivered by Owner to the City pursuant to the terms of this Agreement; and

(b) All of the representations and warranties of Owner contained in this Agreement shall be true and correct in all material respects as of the Closing.

If any of the foregoing conditions precedent are not satisfied within the required time period or waived in writing by the City, the City may, but shall not be obligated to, elect, at its option, by notice to Owner, either to: (i) terminate this Agreement, in which event the Parties hereto shall have no further rights or obligations hereunder, except for those which expressly survive such termination; or (ii) close without regard to the failure of such condition. The foregoing election is not intended to be in derogation of, but shall be in addition to, the City's remedies for Owner's default hereunder.

14. Insurance.

(a) The City, at its expense at all times during the term of this Agreement and any other period of occupancy of the Property by the City, shall obtain and keep in force with respect to the Property (i) commercial general public liability insurance in form customarily written for the protection of owners, patrons, employees, invitees and contractors or anyone else for whom the City is responsible of real estate, with Owner and the City as named insureds, which insurance shall provide coverage of not less than $2,000,000 for each occurrence of bodily injury or property damage, and (ii) workers' compensation insurance as required by statute, and employers' liability insurance in the amount of at least $500,000 per occurrence. All policies of insurance required to be carried by the City hereunder shall provide that they may not be canceled without at least thirty (30) days prior written notice to Owner and name Owner as an additional insured. Prior to the City's taking possession of the Property, the City shall furnish to Owner appropriate certificates evidencing that such insurance is in force and that Owner is named as an insured thereunder.

(b) The City shall cause, at all times during the term of this Agreement and any other period of occupancy of the Property by City, all contractors hired to perform work on the Property to keep in force, with respect to the Property, (i) commercial general public liability insurance in form customarily written for the protection of owners, patrons, employees, invitees and contractors or anyone else for whom such contractor is responsible of, real estate, with Owner and the City as named insureds, which insurance shall provide coverage of not less than $2,000,000 for each occurrence of bodily injury or property damage, and (ii) workers' compensation insurance as required by statute, and employers' liability insurance in the amount of at least $500,000 per occurrence. All policies of insurance required to be carried by the contractors of the City hereunder shall provide that they may not be canceled without at least thirty (30) days prior written notice to the City and Owner and name the City and Owner as additional insured. The City shall cause its contractors, prior to commencing work on the Property, to furnish to Owner appropriate certificates evidencing that such insurance is in force and that the City and Owner are named as an insured thereunder.

15. Notices. All notices required or permitted to be given under this Agreement shall be in writing and either personally delivered, delivered by a recognized national courier service such as Federal Express, sent by prepaid United States certified mail, return receipt requested, or by electronic mail when such electronic mail is transmitted to the electronic mail address specified in this Section, addressed as follows:

If to Owner: Rod Rhoden
4111 S. 144th Street
Omaha, NE 68137

With Copy to: Michael D. Matejka
WOODS AITKEN LLP
10250 Regency Circle, Suite 525
Omaha, NE 68114
Tel: (402) 898-7409
Email: mmatejka@woodsaitken.com

If to the City: _____
ATTN: _____
_____
_____
Tel: _____
Email: _____

Either Party may change its address shown above by giving written notice of such change to the other Party.

16. Repurchase Agreement. The Parties agree that Owner shall repurchase the Property from Owner for an amount equal to the Purchase Price upon the occurrence of (a) completion of the remediation of the Property by the City under the terms of the EPA's Cleanup Grant; (b) the denial of the City's application by the EPA for the EPA's Cleanup Grant; (c) the failure of the City to file for the EPA's Cleanup Grant by the deadline set by the EPA; or (d) the failure of the City to complete the environmental remediation of the Property by January 1, 2028 (each a "Repurchase Event"). Within thirty (30) days after the occurrence of a Repurchase Event, the City shall resell the Property to Owner pursuant to form of Repurchase Agreement in Exhibit "C" attached hereto and incorporated herein by this reference (the "Repurchase Agreement").

17. Multiple Counterpart Copies. Owner and the City may execute multiple counterpart copies of this Agreement, each of which shall be an original for all purposes, but all of which shall constitute one and the same instrument. For the purpose of executing this Agreement, the Parties agree that executed counterpart copies of this Agreement electronically transmitted to the other Party shall be deemed binding and effective provide executed copies are exchanged between the Parties.

18. Brokers. Both Owner and the City represent that have not used any broker, agent, finder or other person in connection with the transaction contemplated by this Agreement to whom a brokerage or other commission or fee may be payable. Each Party agrees to indemnify, defend and hold harmless the other Party from any claims resulting from the breach by the indemnifying Party of the representations in this Section 18.

19. Governing Law. This Agreement shall be governed by the laws of the State of Iowa.

20. Section Titles. The Section titles in this Agreement are solely for convenient reference and shall not be considered in the interpretation or application of this Agreement.

21. Entire Agreement. This Agreement and the exhibits hereto contain the entire agreement between Owner and the City with respect to the subject matter hereof; and there are no agreements, promises, assurances, representations, warranties, undertakings, or understandings, either written or oral, between Owner and the City concerning the Property other than those set forth in this Agreement or referenced herein. No amendment of this Agreement shall be effective or binding unless it is in writing and signed by both Owner and the City.

22. Time of the Essence. Time shall be of the essence with respect to the performance by the Parties of their respective obligations hereunder.

23. Survival. All representations, warranties, covenants, or other obligations of the Parties set forth in this Agreement shall survive the Closing.

24. Severability; Construction. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof so long as the original purpose of this Agreement is not substantially frustrated by reason of the severance of such provision. This Agreement shall not be construed either for or against a particular Party by reason of draftsmanship or otherwise but, rather, shall be interpreted in accordance with the general tenor of the language in order to reach an equitable result.

25. Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of Owner and the City and their respective heirs, personal representatives, successors, and assigns. Neither Party may assign its rights hereunder without the prior written approval of the other Party.

26. Time is of the Essence. Time is of the essence of this Agreement. Whenever action must be taken under this Agreement during a certain period of time that ends on a non-business day, then such period shall be extended until the immediately following business day. As used herein, "business day" means any day other than a Saturday, Sunday or federal or local state holiday. Notwithstanding anything to the contrary, in the event Closing falls on the first business day after a non-business day, Purchaser or Owner may elect to extend the Closing to the second business day after a non-business day.

27. Recording. The Parties shall execute and record a memorandum of this Agreement.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of Effective Date.

OWNER:

_____

Rodney Rhoden, as trustee of the Rodney D. Rhoden Trust dated December 23, 2011, including any amendments thereto

THE CITY:

City of Council Bluffs, Iowa

By:_____

Name:_____

Its:_____

Exhibit "A"

Tax Description of the Property

CO BLUFFS LEWIS AGRI 12-74-44 E637.83' SW SE LYING N HWY & LTS 1, 2 & 3 RHODENS SUB

Exhibit "B"

The Schedule

EPA Brownfields Cleanup Grant Estimated Timeline

Please note that the timeline below is an estimate based off previous EPA Cleanup Grants.

July 2024:

- Determine if applying for Grant

August/September 2024:

- Begin Analysis of Brownfields Cleanup Alternatives (ABCA)

September 2024:

- Grant Opens
- Begin Grant Application
- Draft ABCA (might be able to be covered under City's current assessment grant)

October 2024:

- Transfer Ownership of Property
    - September 27 deadline for City Council
    - October 7 City Council Meeting

October 7, 2024 (anticipated date to meet the October 11th deadline):

- Draft Grant Narrative to City
- Draft ABCA to City
- Publish Community Notification AD Notice (to City to publish) (no later than 14 calendar days before application is submitted to EPA)
- Draft Resolution to City

October 21, 2024:

- Hold Public Meeting
- City Council Approve Resolution to Submit Grant Application

November 2024:

- Submit Grant Application (2023 application was due November 13th)

May 2025:

- EPA Notification of Grant Awards

The below is pending if awarded grant:

June 2025:

- Submit Draft Workplan to EPA for Review

October 2025:

- Grant/Cooperative Agreement Officially Starts

- Procure for Qualified Environmental Professional (QEP) (bid must be open for at least 30 days, per EPA best procurement practices)
- Work with Iowa DNR Land Recycling Program (LRP) to Determine Level of Cleanup

November 2025:
- Select and Award QEP

December 2025:
- Submit Section 106 documents to Iowa State Historic Preservation Office
- Complete Required Community Input Plan

January 2026:
- Draft Bid Specifications for Cleanup

February 2026:
- Cleanup Out to Bid
- Conduct Community Input – per Workplan

March 2026:
- Award Cleanup Contract

April 2026 – April 2027
- Site Cleanup

May 2027 – July 2027
- Grant Closeout

Exhibit "C"

Form of Repurchase Agreement

[See attached.]

REPURCHASE AGREEMENT

THIS REPURCHASE AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 20___ (the "Effective Date"), by and between the City of Council Bluffs, Iowa (the "City"), and Rodney D. Rhoden, as Trustee of the Rodney D. Rhoden Trust dated December 23, 2011, including any amendments thereto ("Buyer"), and. The City and Buyer may be referred to herein individually as a "Party" and collectively as the "Parties." Capitalized terms used in this agreement shall have the meaning ascribed to them in that certain Real Estate Purchase Agreement by and between the Parties dated _____ ____, 2024 (the "REPA").

WHEREAS, pursuant to the REPA, Buyer is required to repurchase the Property from the City upon the occurrence of a Repurchase Event;

WHEREAS, a Repurchase Event has occurred;

WHEREAS, the City desires to sell and the Buyer desires to purchase the Property.

NOW, THEREFORE, in consideration of and based upon the foregoing recitals and the mutual promises and agreements set forth herein, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. Purchase and Sale. Buyer agrees to purchase, and the City agrees to sell, the Property, including all rights of way, easements and appurtenances pertaining to the Property. The purchase price of the Property shall be One Hundred and No/100ths Dollars ($100.00) The Purchase Price shall be payable by Buyer in immediately available funds on the Closing Date (as defined in Section 8 below).

2. Closing Date and Buyer's Conditions of Closing. The closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur on _____ __, 20___, or on such other date as the Parties may mutually agree in writing (the "Closing Date").

3. Conveyance of Property.

(a) At Closing, the City shall execute and deliver to Buyer the following:

i. A special warranty deed (the "Deed") in recordable form, conveying to Buyer marketable fee simple title to the Property, free and clear of all liens, encumbrances, limitations, covenants, reservations, conditions, restrictions and easements.

(b) At Closing, Buyer shall execute and deliver to the City the following:

i. All Buyer documents necessary to close this transaction in accordance with the terms of this Agreement.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

8. Amendment. Neither this Agreement nor any term or provisions hereof may be changed, waived, discharged, amended or modified orally, or in any manner other than by an instrument in writing signed by all of the Parties hereto.

9. Time. Time is of the essence with respect to each term of this Agreement.

10. Governing Law. This agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa, without giving effect to principles and provisions thereof relating to conflict or choice of laws.

11. Documents. Each Party to this Agreement shall perform any and all acts and execute and deliver any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

12. Entire Agreement. This Agreement (and any attached exhibits) contains the entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein. Any and all prior discussion, negotiations, commitments and understandings relating thereto are merged herein. There are no conditions precedent to the effectiveness of this Agreement other than as stated herein, and there are no related collateral agreements existing between the Parties that are not referenced herein.

13. Severability. In the event any term or provision of this Agreement is determined by an appropriate judicial authority to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been inserted herein.

14. Headings. The section or paragraph headings shown in this Agreement are for convenience of reference only and shall not be held to explain, modify, simply or aid in the interpretation, construction or meaning of the provisions of this Agreement.

16. Counterparts. This Agreement may be signed in counterparts, any one of which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the Parties have caused this Repurchase Agreement to be executed effective as of the Effective Date.

BUYER:

_____

Rodney Rhoden, as trustee of the Rodney D. Rhoden Trust dated December 23, 2011, including any amendments thereto

THE CITY:

City of Council Bluffs, Iowa

By:_____

Name:_____

Its:_____