

Whereupon, Council member Pamperin moved that the following Resolution be adopted:

RESOLUTION 2021-24

A RESOLUTION AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF EAGLE GROVE AND DAYBREAK FOODS

WHEREAS, Daybreak Foods wishes to construct an economic development project that will be located in the corporate limits of the City of Eagle Grove, and;

WHEREAS, the City of Eagle Grove has received a Memorandum of Understanding for further consideration for this economic development project, and;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EAGLE, IOWA, that the Mayor and City Administrator are authorized to negotiate this Memorandum of Understanding and are authorized to execute all documentation relating to this Memorandum of Understanding.

The motion was seconded by Council member Jergens and after due consideration thereof, the roll was called, and the following Council members voted:

AYES: Schild, Weland, Pamperin, Jergens, Quintus and Middleton

NAYES: _____, _____, _____, _____, _____

Whereupon, the Mayor declared said Resolution duly passed and adopted this 3rd day of May, 2021.

Sandra McGrath

Sandra McGrath, Mayor

Bryce Davis

Bryce Davis, City Administrator/Clerk

MEMORANDUM OF UNDERSTANDING AND AGREEMENT TO PAY LEGAL FEES

This Memorandum of Understanding is entered into between the City of Eagle Grove, Iowa (the "City") and Daybreak Foods, Inc. (the "Company") as of the ___ day of _____, 2021 (the "Commencement Date").

WHEREAS, the City has established the Eagle Grove Urban Renewal Area (the "Urban Renewal Area"), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Company has proposed to acquire certain real property more specifically described on Exhibit A hereto (the "Property"); and

WHEREAS, the Company has proposed to undertake the redevelopment of the Property (the "Redevelopment Project") including (i) the demolition of existing structures and related asbestos removal on the Property (the "Demolition and Asbestos Removal Project"); and (ii) the construction of a new building (the "Building Project") for use in its business operations on the Property; and

WHEREAS, in order to support the redevelopment of the Property and the construction of the Redevelopment Project, the City will undertake the extension of certain municipal waterworks and sanitary sewer infrastructure improvements (the "City Utility Infrastructure Project") to serve the Property and the Building Project; and

WHEREAS, the Company has requested that the City provide financial support to its undertaking of the Redevelopment Project, and the City is willing to offer such assistance in the form of an economic development grant (the "Grant") to the Company; and

WHEREAS, the City intends to support the Company in its undertaking of the Redevelopment Project by (i) undertaking the necessary urban renewal authorization process pursuant to Chapter 403 of the Code of Iowa, (ii) authorizing and executing a development agreement (the "Development Agreement") regarding the Redevelopment Project and (iii) making provision for the authorization and funding the Grant under the Development Agreement; and

WHEREAS, the Company is willing to assist with the legal costs incurred by the City for the preparation of this Memorandum of Understanding, the Development Agreement and the amending of the plan for the Urban Renewal Area in the event that the Company does not undertake the Project and/or enter into the Development Agreement with the City due to no fault of the City; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

I. MEMORANDUM OF UNDERSTANDING

The parties hereto agree that this Memorandum of Understanding represents each party's commitment to work cooperatively with the other party and to use each party's best efforts to prepare and approve the Development Agreement;

A. Statutory Processes.

Establish Urban Renewal Area & Authorize Development Agreement. The City hereby agrees to undertake the completion of the statutory requirements of Chapter 403 of the Code of Iowa in order to ensure the inclusion of the Property in the Urban Renewal Area and authorize the Redevelopment Project as an urban renewal project. Furthermore, the City agrees to undertake the completion of the statutory requirements of Chapter 403 of the Code of Iowa in order to authorize the Development Agreement.

B. Development Agreement. The Company and the City agree that the Development Agreement will minimally include the following terms:

1. **Property Acquisition.** The Company agrees to acquire fee simple title to the Property, subject to satisfaction of commercially reasonable due diligence contingencies and requirements of its lender, Cargill, Incorporated, a Delaware corporation (the "Lender"). The real estate transaction (the "Real Estate Transaction") for the conveyance of the Property will be documented and conducted through a separate purchase agreement (the "Purchase Agreement"), deeds of sale and related documents to be mutually negotiated and agreed to by the owner of the Property and the Company, which documentation shall contain commercially reasonable representations, warranties and due diligence contingencies. The Company will agree to cause the closing of the Real Estate Transaction on the date (the "Real Estate Transaction Closing Date") and in the manner set forth in the Purchase Agreement.

2. **Demolition and Asbestos Removal Project.** The Company will agree to undertake the demolition of three (3) existing structures on the Property, including the removal of all debris related to such demolition.

The Company will agree that, prior to undertaking the Demolition and Asbestos Removal Project, the Company will cause the required asbestos inspection (the "Asbestos Inspection"). The Company will also agree to undertake any necessary asbestos mitigation as required by the results of the Asbestos Inspection.

The Company will agree to complete the Demolition and Asbestos Removal Project by _____, 2021.

3. **Reimbursement to Tenant Farmer.** The Company will agree to reimburse the tenant farmer currently farming the Property in an amount not to exceed \$7,000 (the "Tenant Farmer Reimbursement").

4. **Project Construction; Maintenance.** The Company will to undertake the construction of the Building Project on the Property. Further, the Company will agree to ensure that the Building Project is constructed in compliance with local zoning, land use, building and

safety codes and regulations. The Company will agree to invest not less than \$5,000,000 into capital improvements, trade fixtures and equipment for the Building Project.

Subject to Unavoidable Delays (as hereinafter defined) and delays related to delayed issuance of necessary governmental permits and consents for the Building Project (so long as the Company is proceeding in good faith) (“Approval Delays”), the Company will agree to commence construction (the “Project Construction Commencement Date”) of the Project within [four (4) months] of the commencement date of the Development Agreement, unless the City and the Company agree in writing to an alternative date. Further, subject to Unavoidable Delays (as hereinafter defined) and Approval Delays, the Company will agree to substantially complete construction of the Project by December 31, 2021 (the period of time between the Project Construction Commencement Date and December 31, 2021, shall herein be referred to as the “Project Construction Period”).

For purposes of the Development Agreement, Unavoidable Delays shall mean delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay including but not limited to storms, floods, fires, pandemics, explosions, or other casualty losses, unusual weather conditions, 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 acts of the City, with respect to a City-claimed delay).

The Company will agree to maintain, preserve, and keep the Property, including but not limited to the Building Project, useful and in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions.

The Company will agree to create ___ full-time equivalent and ___ part-time equivalent employment positions in connection with its business operations on the Property.

5. **Minimum Assessment Agreement.** The Company will agree to enter into an assessment agreement (the “Assessment Agreement”), pursuant to Section 403.6 of the Code of Iowa, fixing the minimum assessed valuation of the Property, in contemplation of the value to be added by the proposed Building Project, at not less than _____ (\$ _____) (the “Minimum Assessed Valuation”) as of January 1, 2022.

6. **Property Taxes.** The Company will agree to make timely payment of all property taxes as they come due with respect to the Property with the completed Building Project thereon throughout the term of the Development Agreement, subject to the terms and conditions of the Assessment Agreement, and to submit a receipt or cancelled check in evidence of each such payment.

7. **No Abatement; No Property Tax Exemption.** The Company will agree that it will not seek any tax exemption deferral or abatement either presently or prospectively authorized under any State, federal or local law with respect to taxation of the Property throughout the term of the Development Agreement including the property to be leased, sold, transferred to

or otherwise used by an entity that is exempt from property taxes under the laws of the State of Iowa.

8. Insurance. The Company will agree to comply with the following provisions in the Development Agreement:

(a) The Company, and any successor in interest to the Company, will agree to obtain and continuously maintain insurance on the Property and the completed Building Project and, from time to time at the request of the City, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Company will agree to obtain and continuously maintain, provided that the Company shall obtain the insurance described in clause (i) below prior to the commencement of construction of the Building Project (excluding excavation and footings):

- (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 Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy, and need only maintain it through completion of the Project.
- (ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the City, as an additional insured, with limits against bodily injury and property damage of not less than \$2,500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.
- (iii) Workers compensation insurance, with statutory coverage.

(b) The Company will agree that all insurance required in this Section shall be obtained and continuously maintained in responsible insurance companies selected by the Company or its successors that are authorized under the laws of the State of Iowa to assume the risks covered by such policies. Unless otherwise provided in this Section, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured at least thirty (30) days before the cancellation or modification becomes effective. Prior to the expiration of any policy, the Company, or its successors or assigns, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section. In lieu of separate policies, the Company or its successors or assigns, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

(c) The Company will agree to apply the proceeds from any and all casualty claims against the insurance detailed in this Section as may be required by its then current lender; provided that in all events the Company will agree that it shall stabilize the Building Project within a reasonable time after the casualty event.

9. **Indemnification.** The Company will agree to indemnify, defend and hold harmless the City, its officers, employees and departments, from and against any and all losses, liabilities, penalties, fines, damages, and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) arising from or in connection with any of the following:

(a) Any third-party claim, demand, action, citation or legal proceeding arising out of or resulting from the construction of the Building Project;

(b) Any third-party claim, demand, action, citation or legal proceeding arising out of or related to occurrences that the Company or successors in interest will insure against in connection with the Building Project and/or the Property; and

(c) Any third-party claim, demand, action, citation or legal proceeding arising out of or resulting from an act or omission of the Company or any of its agents in its or their capacity as an employer of a person.

10. **Mandatory Utility Connection and Usage.** The Company will agree to connect the Property and the Building Project to the municipal sanitary sewer and waterworks systems of the City. The Company will agree to ensure that the Property is being served by the City's municipal sanitary sewer and waterworks systems throughout the term of the Development Agreement and to pay the rates and charges as required by the City's waterworks system and sanitary sewer system rate ordinances.

During the term of the Development Agreement, the Company will agree that it will not construct private facilities to meet the water and sanitary sewer needs of the Property and/or the Building Project.

11. **Voluntary Annexation.** Within ___ days of completion of the Real Estate Transaction Closing Date, the Company will agree to file an application with the City for voluntary annexation of the Property.

The City will agree to initiate the process of review and approval of the Company's application for voluntary annexation upon receipt of that application.

12. **Grant Disbursement Request.** Upon completion of the Demolition and Asbestos Removal Project, the Developer agrees to submit a grant disbursement request (the "Disbursement Request") to the City.

The Disbursement Request shall be accompanied by documentation (the "Demolition Costs Documentation") detailing the costs (the "Demolition Project Costs") incurred in completion of the Demolition and Asbestos Removal Project, including invoices, and such other documentation as may reasonably be requested by the City, confirming that the Demolition Project Costs detailed in the Demolition Costs Documentation were in fact incurred in the construction of the Demolition and Asbestos Removal Project and that such Demolition Project Costs are of an amount reasonably to have been expected with respect to such construction.

If not previously provided to the City, the Disbursement Request shall also be accompanied by the Purchase Agreement detailing the purchase price (the "Purchase Price") of the Property and documentation detailing the amount of the Tenant Farmer Reimbursement.

The Company will agree that the City will not advance the proceeds of the Grant to the Company until such time that the City has issued the Bonds (as hereinafter defined).

13. **City Utility Infrastructure Project.** To the extent that the costs of the City Utility Infrastructure Project will not exceed \$50,000, the City will agree to cause the construction of the City Utility Infrastructure Project in accordance with the timeline and specifications set forth in the Development Agreement.

14. **Structure Removal.** The City will agree to cause the removal of the structure situated at 1020 N. Wright on the Property to the extent that the costs of such removal do not exceed \$85,000.

15. **Issuance of Bonds; Grant.** The City will agree to issue [General Obligation Bonds] [Tax Increment Revenue Bonds] in order to fund the Grant.

Upon receipt of a satisfactory Grant Disbursement Request from the Company and upon issuance of the Bonds, the City will agree to fund the Grant in an amount not to exceed the lesser of (A) the sum of the Purchase Price of the Property, plus the Demolition Costs, plus the Tenant Farmer Reimbursement; or (B) \$325,000.

C. **Liability.** The City and the Company hereby acknowledge that the obligations of the parties described in this Section I are merely a present statement of intent. The Company further acknowledges that the City Council must exercise its ordinary political discretion in the completion of the statutory processes referenced above. The City will not be held liable in the event that the City Council, through the exercise of its ordinary political discretion, determines to not approve any of the actions outlined herein. The Company shall not be held liable hereunder should it determine to not proceed with the execution of the Development Agreement or the undertaking of the Redevelopment Project, except for as set forth in this Section II with respect to certain legal fees.

II. AGREEMENT TO PAY LEGAL FEES

In the event that the Company determines not to undertake the Redevelopment Project and/or fails to enter into the Development Agreement with the City, the Company hereby agrees to pay for the legal fees and administrative costs incurred by the City in connection with the drafting, negotiation and authorization of the Development Agreement, including the costs incurred by the City for the preparation of this Memorandum of Understanding and Agreement to Pay Legal Fees, undertaking the prerequisite amendment to the urban renewal plan, and the preparation of the Development Agreement up to an amount not in excess of \$30,000. The Company agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Company evidencing such costs.

The City and the Company have caused this Memorandum of Agreement and Agreement to Pay Legal Fees to be signed, in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF EAGLE GROVE, IOWA

By _____
Mayor

Attest:

City Clerk

DAYBREAK FOODS, INC.

EXHIBIT A

DESCRIPTION OF THE PROPERTY