

## LAND EXCHANGE AGREEMENT

This Agreement is entered into by and between the **City of Ramsey**, a Minnesota municipal corporation, and **Meadow Creek Builders, Inc.**, a Minnesota corporation.

In consideration of the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Meadow Creek agree as follows:

1. **EFFECTIVE DATE.** The effective date of this Agreement is \_\_\_\_\_.

2. **EXCHANGE OF PROPERTY.**

a. The City owns the following property:

15240 Helium Street N.W., Ramey, PID 23-32-25-41-0035, legally described as Lot 21, Block 1, MEADOW, Anoka County, Minnesota (the “Helium Parcel”).

b. Meadow Creek owns the following properties:

15208 Krypton Terrace N.W., Ramsey, PID 23-32-25-42-0032, legally described as Lot 1, Block 2, MEADOW, Anoka County, Minnesota,

and

[no house number] Krypton Terrace N.W., PID 23-32-25-42-0039, legally described as Outlot A, MEADOW, Anoka County, Minnesota (collectively, the “Krypton Parcels”).

c. The Helium Parcel was utilized as the eastern entrance/exit for the former municipal site and Fire Station No. 2. The Krypton Parcels were utilized as the western entrance/exit for the same site. The City and Meadow Creek wish to exchange the Helium Parcel for the Krypton Parcels.

d. The term “Seller” is used below to refer to the party who currently owns its respective parcel(s), and the term “Buyer” refer to the party seeking to purchase the other party’s parcel(s).

3. **PURCHASE PRICE.** The parties agree to exchange the Krypton Parcels for the Helium Parcel without additional consideration, subject to the terms of this Agreement.

4. **EARNEST MONEY.** No Earnest Money is to be exchanged by the parties.

5. **TITLE COMMITMENT.**

a. Unless otherwise agreed to by the Parties, Title 1, 7535 Sunwood Drive, Ramsey, MN 55303, shall be the Title Company and Escrow Agent for this transaction.

- b. Seller makes no representations or warranties with respect to the status of title to the Property. Within ten (10) business days after the Effective Date, Seller shall, at Seller's expense, obtain a commitment from Escrow Agent to issue an owner's policy of title insurance insuring Buyer's title to the Property (the "Title Commitment") and deliver the Title Commitment and copies of, or internet access to copies of, all recorded documents referenced in the Title Commitment to Buyer.
  - c. Buyer shall have until the date ten business days after the receipt of the Title Commitment ("**Title**") to review Title and to give Seller written notice of (i) any defects in the marketability of Seller's title to the Property or any encumbrances on Seller's title to the Property that are objectionable to Buyer, and (ii) the specific actions Buyer requests that Seller take with respect to each such defect or encumbrance (a "**Title Objection Notice**"). Any defects in or encumbrances on Seller's title that Buyer does not identify in a timely Title Objection Notice are each a "**Permitted Exception**." Within three (3) business days after Seller's receipt of a Title Objection Notice from Buyer, Seller will notify Buyer, in writing, of the actions, if any, that Seller is willing to take with respect to each of the matters identified in the Title Objection Notice and the time frame in which Seller will take those actions ("**Seller's Title Notice**"). If Seller's Title Notice indicates that Seller unconditionally agrees to make Seller's title to the Property marketable on or before the closing date established pursuant to Section 10, the parties shall proceed to closing pursuant to the terms of this Agreement. If Seller's Title Notice indicates that Seller does not unconditionally agree to make Seller's Title to the Property marketable on or before the closing date established in Section 10, Buyer may, at any time with three (3) business days after Buyer's receipt of Seller's Title Notice, terminate this Agreement by written notice to Buyer in which case this Agreement is terminated ("**Buyer's Title Termination Notice**"). If Buyer does not deliver a Buyer's Title Termination Notice to Seller within the three (3) business days after Buyer's receipt of Seller's Title Notice, then Seller must perform in accordance with Seller's Title Notice, Buyer shall be deemed to have waived Buyer's objections to the extent Seller has not agreed to address them in Seller's Title Notice, the matters to which Buyer objected and Seller did not agree to resolve are deemed Permitted Exceptions, and the parties shall proceed to Closing in accordance with the terms of this Agreement and the terms of Seller's Title Notice.
6. **RIGHT OF ENTRY.** Before expiration of the Inspection Period (as defined in Section 8), Buyer (and its employees, agents, and contractors) may enter the Property for the purpose of conducting soil tests, environmental tests and additional survey work, subject to the following conditions:
- a. Upon the earlier of the date one week after Buyer's completion of its activities on the Property or the date one week after the termination of this Agreement, if either Seller or Buyer terminate this Agreement in accordance with the provisions

hereof prior to Closing, Buyer must repair and or restore any damage Buyer or its employees, agents or contractors cause to the Property and remove any personal property, refuse or debris Buyer or its employees, agents or contractors brought onto or authorized third parties to bring onto the Property.

- b. Buyer must defend and indemnify Seller from and against and hold Seller harmless Seller from all "Claims," as defined in Section 9, arising out of, resulting from or relating to any loss of or damage to any property or business or out of any injury to or death of any person, if the loss, damage, injury, or death arises or is alleged to arise either directly or indirectly and either wholly or in part from: (a) any action or omission of Buyer or its employees, agents, or contractors, while on the Property pursuant to this Section; or (b) actions or omissions of Buyer or Buyer's employees, agents, or contractors that cause or result in the release of any Hazardous Substance onto the Property or onto other property.
  - c. Buyer must comply with and shall cause it employees, agents, and contractors to comply with all applicable laws, while on the Property.
  - d. Buyer may not commence any environmental testing on the Property until Buyer submits a work plan for such testing to Seller and Seller approves the work plan, in writing. Seller may not unreasonably withhold, condition or delay Seller's approval of a work plan.
  - e. Buyer must, promptly and without demand from Seller, provide Seller with true and complete copies of all draft and final reports relating to Buyer's geotechnical and environmental investigations and testing of the Property including, without limitation, any reports relating to any Phase I Environmental Site Assessment of the Property.
  - f. The cost of any test or additional survey work will be borne solely by Buyer.
7. **PROPERTY SOLD AS IS.** Subject to Buyer's right to terminate this Agreement pursuant to Section 8, Buyer agrees to accept the Property in its current condition, including, without limitation, its current environmental and geological condition, and in an "AS-IS" and with "ALL FAULTS" condition. Buyer's payment of the Purchase Price at Closing constitutes Buyer's acknowledgment and agreement that:
- a. Seller has not made any written or oral representations or warranties of any kind with respect to the Property (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose);
  - b. Buyer has not relied on any written or oral representation or warranty made by Seller, its agents or employees with respect to the condition or value of the Property;

- c. Buyer has had an adequate opportunity to inspect the condition of the Property, including without limitation any environmental testing, and to inspect documents applicable thereto, and Buyer is relying solely on such inspection and testing; and
- d. The condition of the Property is fit for Buyer's intended use.
- e. Buyer accepts all risk of Claims (including without limitation all Claims under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) whether past, present or future, existing or contingent, known or unknown, arising out of, resulting from or relating to the condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property.

**8. INSPECTION PERIOD.**

- a. Except as otherwise provided in Section 6, Buyer shall have until \_\_\_\_\_, 2015 (the "**Inspection Period**") to investigate the Property and determine, in Buyer's sole judgment, whether (i) the condition of the Property is suitable to Buyer's intended use; and (ii) Buyer will be able to obtain all governmental approvals and utilities necessary for Buyer's intended use of the Property. Buyer acknowledges and agrees that Seller has not made any covenants, representations or warranties regarding Buyer's ability to obtain governmental approvals from the City of Ramsey or any other governmental entity. The City of Ramsey will review, consider and act on any applications Buyer submits to the City for governmental approvals in accordance with City Code.
- b. Buyer may, at any time on or before 5:00 p.m. on the last day of the Inspection Period, terminate the Agreement by written notice to Seller based on Buyer's determination, in Buyer's sole and absolute discretion, that the condition of the Property is not suitable for Buyer's intended use or that Buyer may not be able to obtain all governmental approvals and utilities necessary for Buyer's intended use of the Property. In addition, this Agreement automatically terminates at 5:00 p.m. on the last day of the Inspection Period unless, prior to that time Buyer delivers a written notice of Buyer's intention to proceed (a "**Notice to Proceed**") to Seller.

**9. DEFINITIONS.** As used in this Agreement:

"**Claim**" or "**Claims**" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without

limitation any attorney's fees, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims).

**“Environmental Law”** means the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act (the Clean Water Act), 33 U.S.C. § 1251 et seq. the Clean Air Act, 42 U.S.C. § 7401 et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.

**“Hazardous Substance”** or **“Hazardous Substances”** means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

10. **RELEASE.** Buyer, for itself, its directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors, and assigns and anyone acting on its behalf or their behalf hereby fully releases and forever discharges Seller from any and all Claims (including without limitation all Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation), past, present and future, known and unknown, existing and contingent, arising out of, resulting from, or relating to the condition of the Property, and Buyer hereby waives any and all causes of action (including without limitation any right of contribution) Buyer had, has or may have against Seller and anyone acting on its behalf with respect to the condition of the Property, whether arising at common law, in equity or under a federal, state or local statute, rule or regulation. The foregoing shall apply to any condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property.
11. **INDEMNITY.** To the extent allowed by law, Buyer agrees to indemnify, hold harmless and defend Seller or anyone acting on its behalf for, from and against any and all Claims (including without limitation all Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) past, present and future, existing and contingent, known and unknown arising out of, resulting from, or relating to the condition of the Property. The foregoing shall apply to any condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property, regardless of whether the foregoing condition of the Property was caused in whole or in part by the Seller's actions or inactions.

12. **NOTICES.** Notices permitted or required by this Agreement must be in writing and shall be deemed given when delivered in legible form to the party to whom addressed. Notices may be sent by certified mail, fax or e-mail. Notices are effective two business days after they are mailed via certified mail, return receipt requested or, if delivered in any other manner, when the party to whom the notice is directed actually receives the notice. If delivered at the Closing, a notice shall be deemed given when hand-delivered to the party's representative at the Closing. The business addresses of the parties are as follows:

City Administrator  
City of Ramsey  
7550 Sunwood Drive N.W.  
Ramsey, MN 55303

Meadow Creek Builders, Inc.

Notices not given in the manner or within the time limits set forth in this Agreement are of no effect and may be disregarded by the party to whom they are directed.

13. **CLOSING.** This transaction shall close on the date 10 business days after Buyer delivers a Notice of Suitability to Seller or on such earlier date as Seller and Buyer may establish by mutual, written agreement. The Closing shall take place at the offices of the Escrow Agent, or at some other place as the parties may mutually agree prior to such date. At the option of either Party, the executed closing documents, Purchase Price and closing costs may be deposited with the Escrow Agent and disbursed by the Escrow Agent pursuant to avoid the necessity for a Closing at which the Parties are present.

- a. **Seller's Obligations at Closing.** At Closing, Seller must deliver to Escrow Agent, for delivery to Buyer:
  - i. A quit claim deed, duly executed and acknowledged, conveying title to the Property, subject to (A) the lien of real estate taxes, if any, not yet due and payable and any installments of special assessments certified for payment therewith; (B) Building, Subdivision and Zoning Ordinances; (C) Matters that would be disclosed by an accurate survey of the Property; and (D) matters that constitute Permitted Exceptions pursuant to Section 5;
  - ii. A certified copy of a duly adopted City Ordinance and Resolution authorizing Seller's sale of the Property to Buyer; and
  - iii. Seller's affidavits, well disclosure certificate (if required), settlement statement approved by Seller and Buyer, and any other documents required by the Escrow Agent.

- b. **Buyer's Obligations at Closing.** At Closing, Buyer must:
    - i. File or cause Escrow Agent to file an Electronic Certificate of Real Estate Value.
  - c. **Closing Costs.**
    - i. At Closing, the following Seller closing costs and expenses must be paid from the Purchaser Price or, if the Purchase Price is not sufficient, paid by Seller:
      - 1. Seller's portion of the prorated property taxes.
      - 2. Seller's own attorney's fees.
      - 3. One-half the cost of any closing fees.
      - 4. State deed tax.
      - 5. The cost of providing Title Commitment as prescribed in Section 5.
    - ii. At Closing Buyer must pay the Purchase Price to Seller and the following costs and expenses:
      - 1. Buyer's portion of prorated property taxes.
      - 2. Buyer's own attorney's fees.
      - 3. Documentary and recording fees for the deed(s).
      - 4. One-half the cost of any closing fees.
      - 5. The cost of the owner's title insurance policy if Buyer elects to purchase an Owner's title insurance policy.
  - d. **Possession.** Seller must deliver possession of the Property to Buyer at Closing.
14. **ASSIGNMENT.** This Agreement may not be assigned without the written consent of the non-assigning Party.
15. **THIRD PARTY BENEFICIARY.** There are no third party beneficiaries of this Agreement, intended or otherwise.
16. **JOINT VENTURE.** Seller and Buyer, by entering into this Agreement and completing the transactions described herein, shall not be considered joint venturers or partners.
17. **CAPTIONS.** The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.
18. **ENTIRE AGREEMENT / MODIFICATION.** This written Agreement, and the related Development Agreement, if any, constitutes the complete agreement between the parties

and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver or modification of any of its terms will be effective unless in writing executed by the parties. In the event the terms of this Agreement conflict with the terms of the Development Agreement, the latter shall control.

19. **BINDING EFFECT.** This Agreement binds and benefits the Parties and their successors and assigns.
20. **CONTROLLING LAW.** This Agreement is made under the laws of the State of Minnesota and such laws will control its interpretation.
21. **REMEDIES.**
  - a. If Buyer fails to perform any of the terms or conditions of this Agreement within the specified time limits, Seller may declare this Agreement terminated pursuant to Minnesota Statutes section 559.21. Seller's sole remedy in the event of Buyer's default is retention of the Earnest Money, unless Buyer defaults under Section 7 or 12 of this Agreement, in which case Seller may retain the Earnest money or suspend the performance of its obligations under this Agreement and commence an action in Anoka County District Court to recover its actual damages arising from the default.
  - b. If Seller fails to perform any of the terms or conditions of this Agreement within the specified time limits, Buyer may, as its sole remedy, declare this Agreement terminated in which case Escrow Agent and, if applicable, Seller, shall refund the Earnest Money (both the Initial Disbursement and the Remaining Earnest Money) to Buyer, or, in the alternative, Buyer may have this Agreement specifically enforced. Buyer waives all claims for consequential damages against Seller based on Seller's breach or alleged default hereunder.
22. **WAIVER.** Failure of Seller or Buyer to insist upon the performance of any of the covenants, agreements and/or conditions of this Agreement or to exercise any right or privilege herein shall not be deemed a waiver of any such covenant, condition or right.
23. **SURVIVAL OF TERMS AND CONDITIONS.** The terms and conditions of this Agreement shall survive and be in full force and effect after the delivery of the deed, and shall not be deemed to have merged therein.
24. **SEVERABILITY.** Each provision of this Agreement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Agreement.
25. **CONSTRUCTION.** The Parties acknowledge that this Agreement was initially prepared by Seller solely as a convenience and that all Parties and their counsel hereto

have read and full negotiated all the language used in this Agreement. The Parties acknowledge that because all Parties and their counsel participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement to construe ambiguous or unclear language in favor of or against any Party.

26. **COUNTERPARTS; DIGITAL COPIES.** This Agreement may be executed in any number of counterparts and the signature pages of the separate counterparts combined into a single copy of this Agreement which will then constitute a fully executed version of this Agreement. A facsimile, .pdf file or digital copy of a signed counterpart or of an assemblage of counterparts of this Agreement shall be deemed to be an original thereof.

**The City of Ramsey, Minnesota**

By: \_\_\_\_\_  
Sarah Strommen, Mayor

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_  
Kurt Ulrich, City Administrator

**Meadow Creek Builders, Inc.**

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

Dated: \_\_\_\_\_, 2015

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