

**CITY OF RAMSEY
DEVELOPMENT AGREEMENT
FOR AMSTERDAM EXTENSION**

This Agreement (hereinafter the “Agreement”) is dated as of this _____ day of _____, 2019 and is by and between the **CITY OF RAMSEY**, a Minnesota municipal corporation (the “**CITY**”) and **AMP EX, LLC and SLP EX, LLC**, each a Minnesota limited liability company (collectively, the “**PERMITTEE**”).

Recitals

- A. The **PERMITTEE** is the owner of land legally described on the attached **Exhibit A** (the “**Subject Property**”).
- B. The **PERMITTEE** has received approval from the **CITY** to subdivide the Subject Property and other land as **AMSTERDAN EXTENSION** (the “**Plat**”).

Agreement

- 1. **Recitals. Recitals incorporated.** The recitals stated above are hereby incorporated into this Agreement and are made part of this Agreement by reference.
- 2. **Conditions of Approval.** The **CITY** has approved the Plat subject to satisfaction of the following conditions subsequent:
 - a. **The PERMITTEE’S Execution of this Agreement.** That the **PERMITTEE** enter into this Agreement.
 - b. **Marketable Title.** That prior to recording the Plat, the **PERMITTEE** shall provide the **CITY** with proof of marketable title to the Subject Property either through a currently certified abstract, registered property abstract or title insurance commitment or policy.

c. Previous Development Agreement and Related Documents. The Subject Property is hereby released from:

(1) City of Ramsey Development Contract, Document No. 2022343.005 and Amended and Restated Development Contract (Partial Release), Document No. 2160375.002, which are replaced by this Agreement;

(2) Right of Entry Agreement, Document No. 2022343.009, which will be replaced by a separate agreement;

(3) Storm Water Treatment and Ponding Maintenance Agreement, Document No. 2022343.008, which will be replaced by a separate agreement; and

(4) Assessment Agreement, Document No. 2022343.006 and Document No. 2176959.004, which assessments as they relate to the Subject Property have been paid.

d. Proof of Authority. That the **PERMITTEE** provide proof that the respective governing boards of the **PERMITTEE** have authorized the **PERMITTEE'S** execution of this Agreement. This proof of authority may be satisfied by providing the **CITY** with a certified copy of the minutes of the governing board of each entity which grants such authority.

3. The Plans. The term "Plans" as used in this Agreement means the Final Plans prepared by Anderson Engineering of Minnesota, LLC, last revised _____, 2019 (the "**Plans**"). The Plans remain subject to: (a) **CITY** Staff's review and approval of the Plans to, among other things, confirm that the revisions requested in the **CITY** Staff's review letter have been made; and (b) such further revisions as the **PERMITTEE** may propose and the **CITY** approves. The Plans shall not be attached to this Agreement, but are in the **CITY'S** files. The building and other components of the project contemplated by the Plans (the '**Required Private Improvements**') are identified on the Site Plan, Sheet No. ____.

4. Site Improvements. The site improvements the **PERMITTEE** will construct or install are identified on Exhibit B attached hereto and made a part hereof (the "**Site Improvements**").

The **PERMITTEE** agrees to construct the Site Improvements according to the terms and conditions of this Agreement and in accordance with the Plans and the City Code. Per City Code Section 117-615, the **PERMITTEE** shall provide the **CITY** with a set of reproducible as-built plans in Computer Aided Drafting (CAD) format upon completion of the Site Improvements and acceptance by the **CITY**. As as-built plans are required for the Site Improvement item per City Code Section 117-615, the **CITY** will not release in its entirety the required Site Improvement Financial Guarantee noted in paragraph #11 below until such as-built plans are received by the **CITY**. Additionally, the **PERMITTEE** agrees to provide to the **CITY** the plans in CAD format prior to the commencement of construction of the Site Improvements.

5. Lot Corner Staking. The **PERMITTEE** must install lot corner stakes at all lot corners.

6. Installation of the Site Improvements. The **PERMITTEE** shall obtain all necessary permits from all governmental agencies before commencing construction of the Site Improvements. The **PERMITEE** must provide the **CITY** with copies of all necessary permits from other governmental agencies prior to or when the **PERMITTEE** applies for a building permit to construct improvements on a lot within the Plat. Within thirty (30) days after the completion of the Site Improvements, the **PERMITTEE** shall provide the **CITY** with a complete set of reproducible “As Built” plans for the Site Improvements.
7. Time of Performance for the Site Improvements. The **PERMITTEE** must complete the Site Improvements within one (1) year after the recording of the Plat.
8. Ownership of the Site Improvements. The **PERMITTEE** owns the Site Improvements until the **CITY’S** acceptance of those Site Improvements identified on Exhibit B hereto as public (the “**Public Site Improvements**”). Title to the Public Site Improvements automatically passes to the **CITY** upon the **CITY’S** written acceptance of the Site Improvements. Except to the extent the **CITY** has accepted all or portions of the Site Improvements, in writing, prior to the lapse, expiration, or other termination of the **CITY’S** financial guaranty described in Section 11 and except to the extent the **CITY** and the **PERMITTEE** may agree, in writing, to defer the **CITY’S** acceptance of certain specified Site Improvements, the **CITY** is deemed to have accepted the Site Improvements when the **CITY** releases the financial guaranty described in Section 11 or allows such financial guarantee to lapse, expire or otherwise terminate.
9. Site Improvements License. The **PERMITTEE** hereby grants the **CITY** and the **CITY’S** agents, employees, officers, and contractors an irrevocable license to enter the Subject Property to perform all necessary work and/or inspections the **CITY** deems appropriate during the **PERMITTEE’S** installation of the Site Improvements. The license shall expire after the **CITY** accepts ownership of Site Improvements.
10. Stage II CITY Improvements. None
11. Financial Guaranty for Site Improvements. The **PERMITTEE** shall provide a financial guarantee to the **CITY** in a cash payment guaranteeing the construction of the Site Improvements, and their timely completion. The **PERMITTEE** shall be responsible for a financial guarantee in the amount of **(\$950,000.00)**. Upon completion of the Site Improvements or any portion thereof that has been accepted by the **CITY**, (including the removal of “temporary” erosion control measures as identified in the approved Grading Plan), supported by appropriate lien waivers, the **PERMITTEE** may request a reduction in the amount of the financial guarantee for all or such completed component of the Site Improvements.
12. Inspection Fees for the Site Improvements. The **PERMITTEE** shall provide an inspection fee to the **CITY** to inspect the Site Improvements and Required Private Improvements. The **PERMITTEE** shall be responsible for an inspection fee in the amount of **(\$30,000.00)**, which amount is 5% of the City Engineer’s estimated cost of the Site Improvements. The inspection fee must be in the form of a cash escrow. The **PERMITTEE** may request a refund of the remaining balance in the escrow upon completion of the Site Improvements, acceptance by the **CITY**.
13. Warranty for Site Improvements. The **PERMITTEE** shall provide a one year warranty in the amount of **\$308,965.62**, which is 25% of the cost of the Site Improvements. Said

warranty shall be in force for one year following the final acceptance of any required improvements and shall guarantee satisfactory performance of said improvement. The warranty must be in the form of a Letter of Credit in a form acceptable to the **CITY'S** Finance Director or a cash escrow.

14. Street Cleaning and Clean Up. After the street surfacing that is a part of the Site Improvements is installed, the **PERMITTEE** shall clear any soil, earth, or debris from the streets. From time to time, the **CITY** may remove accumulations of soil, earth, and debris from the streets resulting from the construction of the Site Improvements. It shall be the **PERMITTEE'S** responsibility to pay the costs associated with this necessary street cleaning. Invoices from the **CITY** to the **PERMITTEE** for such costs shall be paid within fifteen (15) days of the date of the invoice.
15. Payment of Development Fees. The **CITY** has previously collected development fees including Sanitary Sewer Connection (Trunk) Fees, Water Connection (Trunk) Fees, Sanitary Sewer Lateral Fees, Water Lateral Fees, Storm Management Fees for the Subject Property.
 - a. Trail Easement. The **PERMITTEE** will grant to the **CITY** a fifteen foot trail easement for the purposes of construction a future greenway corridor trail. The easement shall be established over buildable upland area.
16. Requirements for Building and Occupancy Permits.
 - a. No building permit for any lot in the Plat shall be issued until the **PERMITTEE** has: (a) installed a Class 5 driving surface to within 300 feet of the structure; (b) provided the **CITY** Building Official with a Certificate of Survey; c.) the financial guaranty described in Section 11 to the **CITY**; d.) obtained all necessary permits from the Lower Rum River Watershed Management Organization and has provided a copy of such permit to the **CITY**; and
 - b. No occupancy permit for any lot in the Plat shall be issued until the **PERMITTEE** has: (a) constructed vehicular access to the lot, including the installation of at least one layer of bituminous surfacing; (b) constructed all utilities and storm water facilities this Contract requires to serve the lot and such utilities and storm water facilities are in place, and operational and the **CITY** has accepted those utilities and storm water facilities; (c) for lots that have a slope of less than 2%, provided the **CITY** with a certificate of grading, prepared by a licensed (State of Minnesota) professional land surveyor, certifying that the flattest grade on the lot is 1% or greater; and (d) installed and planted the sod and landscaping that are required as a part of the Site Improvements.
17. PERMITTEE Defaults. If the **PERMITTEE** defaults in the performance of one or more of the **PERMITTEE'S** obligations under this Contract, i) the **CITY** gives the **PERMITTEE** thirty (30) days written notice of the default and ii) the **PERMITTEE** fails to cure the default within said thirty (30), then the **CITY** may pursue any and all remedies available at law or in equity including, but not limited to, the following:

- a. The **CITY** may, at its option, perform or engage one or more third parties to perform the **PERMITTEE'S** obligations. If, in the reasonable judgment of the **CITY'S** staff, the **PERMITTEE'S** default creates an immediate risk to public health or safety, the **CITY** may perform or engage one or more third parties to perform the work before the **CITY** provides the notice described in the initial paragraph of this Section, but the **CITY** must use commercially reasonable efforts to notify the **PERMITTEE** as promptly as possible that the **CITY** is undertaking to perform the **PERMITTEE'S** obligation or obligations. If the **CITY** performs one or more obligations of the **PERMITTEE**, the **PERMITTEE** must reimburse the **CITY** for any costs or expenses the **CITY** incurs, including costs and expenses for **CITY** staff time, to perform the work within 30 days after the **CITY** notifies the **PERMITTEE**, in writing, of the costs and expenses the **CITY** incurred to perform the work. If the **PERMITTEE** does not reimburse the **CITY** within said 30 day period, the **CITY** may pursue any remedies available to the **CITY** either at law or in equity or, in the alternative, the **CITY** may draw on the financial guaranty the **PERMITTEE** has provided to the **CITY** pursuant to this Agreement to reimburse itself for the expenses the **CITY** incurs to perform the work. This Agreement is a license for the **CITY** to act, and it shall not be necessary for the **CITY** to seek a Court Order for permission to enter the Subject Property. As an alternative to seeking recovery from the **PERMITTEE** or the financial guaranty, the **CITY** may levy special assessments against the Subject Property in accordance with Minnesota Statutes Section 429, and the **PERMITTEE**, for itself and its successors in title, hereby expressly waives any and all substantive and procedural objections or defenses the **PERMITTEE** may have to such special assessments;

 - b. The **CITY** may commence an action in Anoka County District Court to pursue any remedy available to the **CITY** at law or in equity including, but not limited to, injunctive relief;

 - c. The **CITY** may refuse to grant building permits for improvements to be constructed on the Subject Property until the **PERMITTEE** has cured all of its defaults; and

 - d. The **CITY** may draw upon all or any portion of the financial guaranty the **PERMITTEE** has provided to the **CITY** pursuant to Section 11 and (i) use all or any portion of the proceeds from the financial guaranty to reimburse the **CITY** pursuant to subsection (a) above; (ii) use all or any portion of the proceeds from the financial guaranty to satisfy any judgment the **CITY** obtains against the **PERMITTEE** pursuant to subsection (b) above; (iii) use all or any portion of the proceeds to reimburse the **CITY** pursuant to Section 19 (j) below; and (iv) hold all or any portion of the proceeds for a reasonable time for the future application as described in subsections (i), (ii) and (iii) of this Section 17(d).
18. Maintenance Guarantee for Landscaping. It is herein agreed that the **PERMITTEE** shall provide a maintenance guarantee to ensure the survival of the plantings for the Subject Property. Said maintenance guarantee shall consist of cash or a Letter of Credit, approved as to form by the **CITY**, in the amount of \$ ____ . [# plantings (____ trees) x cost/planting

(\$300/tree x 30% average non-survival rate], which shall be in effect for a two-year period commencing on the date of the **CITY'S** acceptance of the landscaping component of the Site Improvements.

At the end of the two-year period, the maintenance guarantee shall be returned to the **PERMITTEE**. The determination that all plantings that have been planted in accordance with the Landscape Plan have either survived or have been replaced shall be made by the Community Development Department. In the event the **PERMITTEE** fails to maintain the required plantings for a two-year period, the City Council may order the replacement of plantings with **CITY** day labor and/or by letting contracts and draw upon the escrow for payment. Only the City Council shall have the authority to direct replacement of the plantings and withdraw from the escrow account. The **PERMITTEE** hereby grants permission and a license to the **CITY** and/or its contractors and assigns to enter upon the Site for the purpose of replacing plantings in the event of the Permittee's default.

19. Miscellaneous.

- a. Invalidity of Any Section. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- b. Written Amendments Only. The action or inaction of the **CITY** or the **PERMITTEE** shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties, and approved by a resolution of the **CITY** Council. The **CITY'S** or the **PERMITTEE'S** failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- c. Compliance with Laws and Regulations. The **PERMITTEE** represents to the **CITY** that the Plat complies with all **CITY**, County, metropolitan, State, and Federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances and environmental regulations. If the **CITY** determines that the Plat does not comply, the **CITY** may, at its option, refuse to allow any construction or development work in the Plat until the **PERMITTEE** does comply. Upon the **CITY'S** demand **PERMITTEE** shall cease work until there is compliance.
- d. Mailbox Locations. If the **PERMITTEE** desires to construct mailboxes within the public right of way, the **PERMITTEE** agrees that the placement of mailboxes along public streets is subject to the approval by the **CITY**. Utility locates will be necessary.
- e. Boulevard and Wetland Restoration. The **PERMITTEE** shall be responsible for the cost of establishing seed in all boulevards within thirty (30) days of the completion of the street improvements, and restoring all other areas disturbed by the development grading operation in accordance with the approved Grading and Erosion Control plan. The **PERMITTEE** shall be responsible for the cost of

cleaning any soil, earth, or debris from the wetlands within and adjacent to this Plat resulting from grading performed in the development of the Plat.

- f. Construction, Hours and Entrance Signs. The **CITY** restricts construction and delivery hours to Monday through Saturday 7:00 a.m. to 10:00 p.m. The **PERMITTEE** is required to provide a sign at each entrance point stating delivery and construction operation hours. Said signs are not to exceed eighty (80) square feet in size and must be clearly visible at all times during the construction period.

- g. Construction Site Maintenance. The **PERMITTEE** shall adhere to all of the **CITY** ordinances relating to, but not limited to, dumping of garbage, site development, construction debris, open burning, etc. The **CITY** reserves the right to withhold permits, inspections, or certificates of occupancy to correct violations relating to construction site maintenance.

- h. Estimated Cost. It is understood and agreed that cost amounts set forth in this Agreement as to Site Improvements, unless qualified as fixed amounts, are estimated. The **PERMITTEE** agrees to pay the entire cost of said improvements including interest, engineering and legal fees related thereto.

- i. Plat Approval Expenses. The **PERMITTEE** agrees that it will pay to **CITY** all **CITY** expenses incurred in the approval of the Plat, including, but not limited to, administration expenses, engineering and legal fees. Said expenses incurred after recording of the Final Plat shall also be paid within said fifteen (15) day billing period. Failure to pay the **CITY'S** expenses within the fifteen (15) day billing period will permit the **CITY** to draw upon any of the escrows required by this Agreement for payment.

- j. Reimbursement to the CITY. The **PERMITTEE** agrees to reimburse the **CITY** for all costs incurred by the **CITY** in defense or enforcement of this Agreement, or any portion thereof, including court costs and reasonable engineering and attorney's fees.

- k. Certificate of Occupancy. The term "Certificate of Occupancy" as used in this Agreement shall be defined as a document issued by the **CITY'S** Building Official, which authorizes the structure to be used for its intended purposes.

- l. Notices. Required notices shall be in writing, and shall be either hand delivered to the Parties, its employees or agents, or mailed to them by certified or registered mail at the following address:

TO PERMITTEE:
Attn: Jeffrey R. Peterson

c/o Commercial Partners Exchange
1300 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
Email: jeffp@cpec1031.com

WITH A COPY TO:

Attn: John D. Lang, Esq.
Messerli & Kramer P.A.
100 South Fifth Street, Suite 1400
Minneapolis, MN 55402
E-mail: jlang@messerlikramer.com

TO THE CITY:

City of Ramsey
Attn: Community Development Director
7550 Sunwood Drive NW
Ramsey, MN 55303

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EXHIBIT A

Legal Description of the Subject Property

Lot 1, Block 1, and Outlot A, Amsterdam Extension, Anoka County, Minnesota.

EXHIBIT B
Site Improvements

Civil Construction Cost Estimate - Delta MOD Tech					
Ramsey, MN					
AE Project #		15358			
Date		6/21/2019			
Item #	Description	Qty	Unit	Price/Unit	Total
Storm Sewer Utilities					
1	12" HDPE	681	LF	\$ 24.00	\$ 16,344.00
2	15" HDPE	300	LF	\$ 24.00	\$ 7,200.00
3	18" HDPE	477	LF	\$ 32.00	\$ 15,264.00
4	24" HDPE	527	LF	\$ 45.00	\$ 23,715.00
5	12" FES	2	EA	\$ 500.00	\$ 1,000.00
6	15" FES	2	EA	\$ 650.00	\$ 1,300.00
7	24" FES	4	EA	\$ 1,300.00	\$ 5,200.00
8	27" Manhole w/ Casting	1	EA	\$ 1,500.00	\$ 1,500.00
9	48" Manhole w/ Casting	8	EA	\$ 2,000.00	\$ 16,000.00
10	48" OCS w/ Casting	2	EA	\$ 4,000.00	\$ 8,000.00
11	2'x3' CB	3	EA	\$ 1,650.00	\$ 4,950.00
12	Rip Rap at FES and Curb Cuts	240	CY	\$ 75.00	\$ 18,000.00
Storm Sewer Subtotal					\$ 118,473.00
Watermain and Fittings					
1	Hydrant	9	EA	\$ 1,800.00	\$ 16,200.00
2	6" Gate Valve	9	EA	\$ 1,300.00	\$ 11,700.00
3	8" Gate Valve	7	EA	\$ 1,700.00	\$ 11,900.00
4	8" x 6" Tee	9	EA	\$ 450.00	\$ 4,050.00
5	8" x 8" Tee	1	EA	\$ 450.00	\$ 450.00
6	8" Plug	2	EA	\$ 250.00	\$ 500.00
7	6" PVC C900 Pipe	300	LF	\$ 30.00	\$ 9,000.00
8	8" PVC C900 Pipe	3510	LF	\$ 32.00	\$ 112,320.00
9	Connect to Existing	2	EA	\$ 1,000.00	\$ 2,000.00
Watermain Subtotal					\$ 168,120.00
Sanitary Sewer Utilities					
1	6" SDR 26	285	LF	\$ 30.00	\$ 8,550.00
2	8" SDR 26	440	LF	\$ 32.00	\$ 14,080.00
3	Connect to Existing	1	LS	\$ 1,000.00	\$ 1,000.00
4	48" Sanitary Manhole w Casting	3	EA	\$ 3,350.00	\$ 10,050.00
Sanitary Sewer Subtotal					\$ 33,680.00
Grading, Excavation, and Erosion Control					
1	Mobilization	1	EA	\$ 5,000.00	\$ 5,000.00
2	Clear and Grub	1	LS	\$ 2,000.00	\$ 2,000.00
3	Common Excavation	47990	CY	\$ 3.00	\$ 143,970.00
4	Common Borrow*	0	CY	\$ 10.00	\$ -
5	Seeding	12.6	AC	\$ 2,000.00	\$ 25,200.00
6	Sod	190000	SF	\$ 0.30	\$ 57,000.00
6	CAT III Erosion Control Blanket	12850	SY	\$ 2.50	\$ 32,125.00
7	Silt Fence	5600	LF	\$ 2.00	\$ 11,200.00
8	Rock Construction Entrance	3	EA	\$ 1,200.00	\$ 3,600.00
9	0-4 FT Retaining Wall	80	LF	\$ 225.00	\$ 18,000.00
10	Inlet Protection	10	EA	\$ 250.00	\$ 2,500.00
Grading Subtotal					\$ 300,595.00
Paving					
1	MNDot Class V	5780	CY	\$ 22.50	\$ 130,050.00
2	2.5" MNDot 2360 Base Course	18300	SY	\$ 7.50	\$ 137,250.00
3	Tack Coat	1647	GAL	\$ 3.50	\$ 5,764.50
4	1.5" MNDot 2360 Wear Course	18300	SY	\$ 7.00	\$ 128,100.00
5	Concrete Sidewalk and Patio	320	CY	\$ 12.00	\$ 3,840.00
6	Commercial Entrance	2	EA	\$ 5,225.00	\$ 10,450.00
7	B612 Curb and Gutter	9070	LF	\$ 22.00	\$ 199,540.00
Paving Subtotal					\$ 614,994.50
TOTAL					\$ 1,235,862.50
Notes					
1	Assumed excess cut material will be relocated on site.				