

Date March 7, 2022

RESOLUTION APPROVING URBAN RENEWAL DEVELOPMENT AGREEMENT WITH NMDP HOLDINGS, LLC (ADAM PETERSEN) FOR EXPANSION OF INDUSTRIAL PRECAST PRODUCTION PLANT LOCATED AT 3312 EAST GRANGER AVENUE

WHEREAS, NMDP Holdings, LLC (“Developer”), affiliate of PDM Precast, Inc. and represented by Adam Petersen, President, proposes to undertake an expansion of the existing precast production plant located at 3312 East Granger Avenue with construction of a 51,335 square-foot production building and an employee parking lot (collectively “Improvements”) in the SE Agribusiness Urban Renewal Area, at an estimated total project cost of \$4,500,000.00, subject to receipt of the financial assistance identified below; and

WHEREAS, construction of the Improvements is anticipated to commence in spring 2022, with completion in fall 2022; and

WHEREAS, on October 18, 2021, by Roll Call No. 21-156, the City Council received the preliminary terms of proposed agreement with the Developer and directed the City Manager to proceed with negotiation of a development agreement with the Developer on final terms of an Urban Renewal Development Agreement consistent with the preliminary terms for consideration for approval by the City Council; and

WHEREAS, the City’s Office of Economic Development has negotiated an Urban Renewal Development Agreement (the “Development Agreement”) with the Developer, whereby the Developer has agreed to construct the Improvements, in accordance with the Conceptual Development Plan, which proposed Development Agreement and Conceptual Development Plan are on file in the office of the City Clerk; and

WHEREAS, the proposed Development Agreement provides that in consideration of the Developer’s commencement and completion of the Improvements, the City will provide an economic development grant upon project completion of up to \$275,000.00 (cash basis) to be advanced from the Economic Development Enterprise Fund, which fund will thereafter be reimbursed by tax increment generated within the SE Agribusiness Urban Renewal Area; and

WHEREAS, at its meeting on March 1, 2022, the Urban Design Review Board voted 8-0 to recommend approval of final design of the Improvements as proposed by the Developer and set forth in the Conceptual Development Plan, and for approval of the financial assistance as set forth above and in said Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

1. That the City Council hereby makes the following findings in support of the proposed Development Agreement with NMDP Holdings, LLC:
 - a. Developer’s obligations under the Development Agreement to redevelop the Property for production building uses furthers the objectives of the SE Agribusiness Urban Renewal Plan to advance the improvement and redevelopment of the SE Agribusiness Urban Renewal Area in accordance with the Urban Renewal Plan, encourage the elimination of vacant and under-utilized parcels, provide for the orderly expansion of appropriate industrial uses in Des Moines, retain existing job opportunities within the City of Des Moines and the Urban Renewal Area that might otherwise be lost and is anticipated to lead to a future growth in such job opportunities, it will assist in the maintenance and expansion of the tax base in the Urban Renewal Area.
 - b. The economic development incentives for the development of the Project are provided by the City pursuant to the Urban Renewal Law and Chapter 15A of the Code of Iowa, and Developer's

Date March 7, 2022

obligations under this Agreement to construct the Improvements will generate the above-stated public gains and benefits.

- c. The construction of the Project is a speculative venture and the construction and resulting benefits would not occur without the economic incentives provided by the Development Agreement.
- d. The redevelopment of the Property pursuant to the Development Agreement, and the fulfillment generally of the Agreement, are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the Project has been undertaken, and warrant the provision of the economic assistance set forth in the Agreement.

2. The Urban Renewal Development Agreement between the City and Developer, and the Conceptual Development Plan attached thereto, both as on file in the office of the City Clerk, are hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute and attest to, respectively, the Agreement on behalf of the City of Des Moines.

3. The Development Services Director or her designee are directed to submit a copy of the fully executed Development Agreement to the Finance Department for purposes of required Electronic Municipal Market Access disclosure filings.

4. Upon requisition by the Office of Economic Development, the Finance Department shall advance the installments on the Economic Development Assistance pursuant to Article 4 of the Development Agreement.

5. The Department Services Director or designee(s) are hereby authorized and directed to administer the Development Agreement on behalf of the City, and to monitor compliance by the Developer with the terms and conditions of the Agreement. The Department Services Director is further directed to forward to City Council all matters and documents that require City Council review and approval in accordance with the Agreement.

(Council Comm. No. 22-106)

MOVED BY _____ TO ADOPT.

SECOND BY _____.

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
SHEUMAKER				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

Mayor

City Clerk

Prepared by: Glenna K. Frank, Assistant City Attorney, City Hall - Legal Dept, 400 Robert D Ray Drive, Des Moines, IA 50309 515/283-4130
Return Address: City Clerk - City Hall, 400 Robert D Ray Drive, Des Moines, IA 50309
Grantor's Name: City of Des Moines, Iowa
Grantee's Name: NMDP Holdings LLC
Legal Description: The Property described in Exhibit "A" at page 18.

URBAN RENEWAL DEVELOPMENT AGREEMENT
SE Agribusiness Urban Renewal Area

By and Between
CITY OF DES MOINES, IOWA
and
NMDP HOLDINGS LLC

Approved by City Council:
Date: _____, 2022
Roll Call No. 22- _____

Exhibits:

"A" - Legal Description of the Property

"B" – Conceptual Development Plan (On File for Public Inspection, Office of Des Moines City Clerk)

NOTE: This Agreement and Exhibit "A" is intended to be recorded in the land records of the Polk County Recorder. This Agreement and all exhibits hereto shall be on file and available for public inspection in the office of the City Clerk, at City Hall, City of Des Moines, Iowa.

This URBAN RENEWAL DEVELOPMENT AGREEMENT, including Exhibits, each of which is attached hereto and by this reference made a part hereof (collectively the "Agreement"), is made on or as of the _____ day of _____, 2022, by and between the CITY OF DES MOINES, IOWA (the "City"), a municipal corporation acting pursuant to Chapter 403 of the Code of Iowa (the "Urban Renewal Law"), and NMDP HOLDINGS LLC, an Iowa limited liability company (the "Developer").

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Law, City has undertaken an urban renewal project known as the SE AgriBusiness Urban Renewal Project in an area (hereinafter called "Urban Renewal Area") characterized by underutilized and vacant land and a pattern of disinvestment, located between SE 14th Street and SE 43rd Street, and extending north from the Des Moines River to Dean Avenue, for the purpose of creating and sustaining development in a healthy, high quality environment that will retain and create livable wage jobs and generate an increased tax base; and

WHEREAS, as of the date of this Agreement there has been prepared and approved by City a plan for the Urban Renewal Area, consisting of the Urban Renewal Plan for the SE AgriBusiness Urban Renewal Area and amendments thereto, all of which have been recorded among the land records in the Office of the Recorder for Polk County, Iowa, as indicated in the following table:

<u>Action</u>	<u>Date Adopted</u>	<u>Roll Call</u>	<u>Book-Page</u>
Plan Adopted	1/26/1998	98-275	7817-399
First Amendment	03/15/1999	99-756	8167-460
Second Amendment	06/17/2002	02-1589	9200-260
Third Amendment	10/27/2008	08-1882	12281-340
Fourth Amendment	11/21/2011	11-2007	14077-668
Fifth Amendment	02/11/2013	13-0254	14661-630
Sixth Amendment and Restated Plan	03/10/2014	14-0436	15147-570
Seventh Amendment	06/27/2016	16-1088	16082-24
Eighth Amendment	04/03/2017	17-0621	16441-125
Ninth Amendment	10/09/2017	17-1785	16690-321
Tenth Amendment	04/09/2018	18-0355	16887-843
Eleventh Amendment	09/10/2018	18-1551	17088-251

(which plan, as so amended is hereinafter called the "Urban Renewal Plan"); and

WHEREAS, Developer owns the real property locally known as 3312 East Granger Avenue, Des Moines, Iowa, described in the attached Exhibit "A" (hereinafter referred to as the "Property"); and

WHEREAS, Developer is an industrial business which produces precast concrete and steel products on the Property and is proposing an expansion, including an employee parking lot and a 40,000 square-foot production building (collectively "Improvements"), at an estimated project cost of \$4,000,000.00 and subject to the economic development assistance described herein; and

WHEREAS, the economic development incentives are provided by the City to Developer pursuant to the Urban Renewal Law and Chapter 15A of the Code of Iowa, and Developer's obligations under this Agreement to construct the Improvements (defined below) will generate the above-stated and following public gains and benefits: (i) it will advance the improvement and redevelopment of the SE Agribusiness Urban Renewal Area in accordance with the Urban Renewal Plan; (ii) it will encourage the elimination of vacant and under-utilized parcels; (iii) it will provide for the orderly expansion of appropriate industrial uses in Des Moines; (iv) it will retain existing job opportunities within the City of Des Moines and the Urban Renewal Area that might otherwise be lost and is anticipated to lead to a future growth in such job opportunities; and (iii) it will assist in the maintenance and expansion of the tax base in the Urban Renewal Area; and

WHEREAS, the undertaking by Developer to use and maintain the Property as provided in this Agreement will not occur without the financial assistance as provided by this Agreement; and

WHEREAS, City believes that the development of the Property pursuant to this Agreement is in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the SE Agribusiness Urban Renewal Project has been undertaken, and warrant the economic development assistance as set forth in this Agreement.

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

ARTICLE 1. DEVELOPMENT OF THE PROPERTY

Sec. 1.1. Duty to Construct Improvements. A. Developer agrees, subject to the terms of this Agreement, to redevelop the Property by causing construction of the following improvements (the "Improvements") to the Property:

1. Construction of a 51,355 square-foot production building and an employee parking lot.
2. Installation of fire suppression sprinkling system(s) required by the City-approved building permits.
3. Site improvements, stormwater management facilities, and landscaping in form required by City-approved site plan.

B. The Improvements shall be constructed in substantial compliance with the approved Conceptual Development Plan attached hereto as Exhibit "B" and with such future amendments thereto as may be approved by City as provided in Article 2. The Improvements shall also comply with the terms of this Agreement, and with all applicable State and local laws and regulations, including but not limited to site plan review and City-approved site plan, and all applicable zoning, planning and design, and building codes.

Section 1.2. Time for Completion of Improvements. Subject to Section 5.4 of this Agreement, Developer shall cause construction of the Improvements to be commenced by May 1, 2022 and shall cause such construction to be diligently pursued to completion. Subject to Sections 5.2 and 5.4 of this Agreement, the Improvements shall be substantially completed by December 1,

2022¹, so as to qualify for the issuance of the Certificate of Completion under Section 2.4 of this Agreement.

Sec. 1.3. Progress Reports. From commencement of construction until construction of the Improvements has been substantially completed, Developer shall make reports, in such detail and at such times as may reasonably be requested by City, as to the actual progress of Developer with respect to such construction.

Sec. 1.4. Access to Property. During construction of any of the Improvements and prior to expiration of the Declaration of Covenants, as defined in Article 3, Developer shall permit City's representatives access to the Improvements at all reasonable times which City reasonably deems necessary for the purposes of this Agreement. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this Section.

ARTICLE 2. CONCEPTUAL DEVELOPMENT PLAN

Sec. 2.1. Site Plan Review Pre-Application Conference. The Developer will undertake a pre-application conference for the Improvements pursuant to the Site Plan Review process as required by City of Des Moines Municipal Code Chapter 135, Article 9. The review required by the Planning and Design Ordinance, Des Moines Municipal Code Chapter 135, is a separate review process from the review of the Conceptual Development Plan provided for in this Agreement. Approval of a plan or an amendment thereto pursuant to one does not constitute approval for purposes of the other.

Sec. 2.2. Conceptual Development Plan. A. The approved Conceptual Development Plan for the Improvements is attached hereto as Exhibit "B". Any amendment to the Conceptual Development Plan by Developer is subject to approval by the City as described in this Section.

B. All changes to the approved Conceptual Development Plan must be submitted by Developer to City and are subject to City approval, which approval shall not be unreasonably withheld or delayed. City shall endeavor to promptly review the Conceptual Development Plan and any amendments thereto within the applicable limits of the agenda deadlines and public notice requirements. If City rejects an amendment to the Conceptual Development Plan, in whole or in part, it will set forth in writing the reasons for such rejection. Any proposed change which is determined by the City Manager of City to be a minor or unsubstantial change may be administratively approved in writing by the City Manager or by the Economic Development Administrator.

C. The Conceptual Development Plan as originally approved and as amended, shall include a conceptual site plan, detailed building elevations for each building face, a landscape and streetscape plan for the Property and otherwise satisfy the following criteria:

1. The Conceptual Development Plan must comply with the requirements of this Agreement and must satisfy the land use requirements of the Urban Renewal Plan.
2. The Improvements must comply with the City-approved site plan, and all applicable zoning, planning and design, building, and similar local codes.

¹ See Section 5.2 for special remedy for a delay in timely qualifying for issuance of the Certificate of Completion.

3. The durability, appearance and quality of the exterior materials for the Improvements must be substantially equivalent to, or better than, that identified for provided by the original Conceptual Development Plan attached hereto as Exhibit "B".
4. The Plan must be reviewed by the Urban Design Review Board, and must comply with the recommendations of the Urban Design Review Board as adopted or amended by the Economic Development Administrator, unless such recommendations are waived or amended by City Council resolution.

Sec. 2.3. Building Permits/Construction Permits. All construction and construction plans submitted by Developer must comply with City zoning, site plan, and building code requirements. In addition, Developer is responsible for assuring that both the construction and the construction plans are in substantial compliance with the approved Conceptual Development Plan and amendments thereto. City may withhold approval of building permits if the construction plans do not substantially comply with the approved Conceptual Development Plan and amendments thereto. However, approval or issuance of building permit is not an acknowledgment that the construction and construction plans are in substantial compliance of the obligations of this Agreement and the approved Conceptual Development Plan and amendments thereto². If there is any reason to question whether the construction or the construction plans substantially conform with the Conceptual Development Plan or amendments thereto, Developer shall immediately contact the City of Des Moines Office of Economic Development.

Sec. 2.4. Certificate of Completion. A. Developer shall request a Certificate of Completion for the Improvements by notifying City in writing that it has completed the Improvements in substantial compliance with the approved Conceptual Development Plan and Construction Plans, and furnishing City with an architect's certificate or reasonable equivalent to that effect.

B. Promptly upon receipt of Developer's notification of completion of the Improvements, City shall inspect such Improvements. If City determines that Developer has completed the Improvements in substantial compliance with the provisions of this Agreement and the approved Conceptual Development Plan, as amended, and Construction Plans, City shall issue a Certificate of Completion so certifying. Issuance of the Certificate of Completion shall not be unreasonably withheld or delayed by City. If City determines that Developer has not completed the Improvements in substantial compliance with the provisions of this Agreement and the approved Conceptual Development Plan, as amended, and Construction Plans, City shall, within thirty (30) days of receiving Developer's notification of completion, provide Developer with a written statement of the basis for City's determination which specifies the actions to be performed by Developer in order to obtain the certification.

C. The City may withhold issuance of the Certificate of Completion until Developer has satisfied the following conditions precedent, and is otherwise in compliance with the terms this Agreement:

² The Permit & Development Staff responsible for the administration of building permits are NOT responsible for verifying that an application for a building permit conforms with the requirements of this Agreement.

1. Developer has provided to City documentation of fire suppression sprinkling systems installed in the Improvements, as documented by Developer to City through invoices provided by independent third-party contractor(s), proof of payment made by Developer, and all other form(s) of documentation required by the City's Office of Economic Development

D. The determination by City regarding completion of the Improvements is independent of any determination by City regarding the issuance of an Occupancy Permit pursuant to the Building Code of City. The issuance of an Occupancy Permit for the Property shall not serve as a substitute for the Certificate of Completion referenced in this Section.

Sec. 2.5. Effect of Issuance. A. Upon issuance of the Certificate of Completion, the obligations and covenants contained in this Agreement with respect to the construction of the Improvements and the dates for the beginning and completion thereof, shall be satisfied and terminated. However, all other obligations and covenants contained in this Agreement shall remain in full force. Developer may utilize the Certificate of Completion only as evidence of compliance with or satisfaction of Developer's corresponding construction obligations under this Agreement.

B. The Certificate of Completion shall be in recordable form to allow filing among the land records of the Polk County Recorder's Office.

ARTICLE 3. URBAN RENEWAL COVENANTS

Sec. 3.1. Duration. The Urban Renewal Covenants imposed pursuant to this Article shall apply to the Property and shall run with the land upon which the Property is located for a term commencing upon the date of recording of this Agreement and continuing until City's issuance of the Certificate of Completion in accordance with Article 2 (herein also referred to as "Restricted Term"), unless earlier terminated in accordance with, or otherwise limited by, this Agreement.

Sec. 3.2. Representations as to Redevelopment. Developer recognizes and acknowledges:

1. The importance of the redevelopment of the Property to the general welfare of the community as a whole;
2. The public aid that has been made available by City for the purpose of making such redevelopment possible; and
3. The qualifications and identity of Developer are of particular concern to the community and City and are an important element in City's decision to enter into this Agreement.

Sec. 3.3. Legal Status / Authorization to Sign. The officers signing this Agreement on behalf of Developer represent and warrant that they have the authorization of Developer to enter into this Agreement.

Sec. 3.4. Declaration of Covenants. Developer hereby conveys to City the beneficiary interest of the covenants set forth below in and to the Property, on behalf of the Developer and of any entity using or occupying the Property:

1. Prohibition Against Discrimination in Sale or Leasing. Developer, its successors and assigns shall not, in violation of any applicable law, discriminate against or segregate any

person or group of persons on account of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability, familial status, or source of income in the sale, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property or the Improvements erected thereon, and not establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, sub-tenants or vendees in the Property or the Improvements erected thereon, in violation of any applicable law.³

2. Prohibition Against Discrimination in Employment. In the employment of persons upon the Property, Developer, its successors and assigns shall comply with all federal, State of Iowa and local laws prohibiting discrimination.
3. Maintenance. The Improvements constructed upon the Property pursuant to the Agreement shall be maintained in good condition and repair in substantial conformance with the approved Conceptual Development Plan and construction plans. In the event of fire or other casualty loss to the Improvements, repairs to restore the Improvements to their former condition in substantial conformance with the approved Conceptual Development Plan and construction plans shall be commenced within one hundred twenty (120) days and diligently pursued to completion, subject, however, to Section 5.4.
4. Prohibition Against Transfer. A. Prior to issuance of the Certificate of Completion for the Improvements pursuant to Article 2 herein, Developer shall not without the prior written approval of City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer of the Property, or any part thereof or any interest therein, or any agreement to do any of the same, except leases made in the ordinary course of business, and easements or other encumbrances necessary for the Improvements.
B. City shall be entitled to require as a condition to any such approval that:
 - (1) Any proposed transferee shall have the qualifications and financial responsibility, as determined by City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part);
 - (2) Any proposed transferee, by an instrument in writing satisfactory to City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of City, expressly assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part); and
 - (3) All instruments and other legal documents involved in effecting transfer be submitted to City for review prior to the transfer.

³ Source of income as defined in Section 62-1 of the Des Moines Municipal Code means money, funds, income, and support, payable directly or indirectly to or on behalf of a renter or buyer of housing, derived from any pension, annuity, child support, or alimony, or any tax supported Federal, State or local funds, including but not limited to, social security, supplemental security income, temporary assistance for needy families, family investment program, general relief, food stamps, unemployment compensation, housing choice voucher rent subsidies, and similar rent subsidy programs.

C. In the absence of specific written agreement by City to the contrary, no such approved transfer by City shall be deemed to relieve Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

5. Limitation Upon Encumbrance of Property.

A. Prior to issuance of the Certificate of Completion pursuant to Article 2 of the Agreement, Developer shall not engage in any transaction imposing any encumbrance or lien upon the Property, or any part thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to attach to the Property, except as permitted under paragraph B, below.

B. Liens and encumbrances may be imposed upon the Property, and any part thereof, only for the purpose of (i) constructing the Improvements and obtaining funds to complete the same; and (ii) the payment of installments of property taxes and special assessments that are due, but not delinquent. Developer shall use its best efforts to cause to be included in any mortgage on the Property a provision requiring that whenever the mortgagee shall deliver any notice or demand to Developer with respect to any breach or default by Developer in its obligations under such mortgage, the mortgagee shall at the same time forward a copy of such notice or demand to City at the address shown in Article 6 of this Agreement.

C. Developer shall not be required to remove any encumbrance or lien required to be removed under paragraph A, above, so long as Developer shall contest, in good faith and at its own cost and expense, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the collection of or other realization upon the encumbrance or lien so contested, and the sale, forfeiture, or loss of the Property or any part thereof to satisfy the same. Each such contest shall be promptly prosecuted to final conclusion (subject to the right of Developer to settle any such contest), and Developer shall, promptly after the final determination of such contest or settlement thereof, pay and discharge the amounts which shall be determined to be payable therein, together with all penalties, interest, costs and expenses thereon or in connection therewith. Developer shall give City prompt written notice of any such contest and of the final outcome thereof.

6. Situs for Taxation. Developer shall pay when due all taxes and assessments, general or special, levied upon or assessed against any part of the Property. Developer, its successors and assigns, and every successor in interest to the Property and the Improvements thereon, or any part thereof, shall not cause or voluntarily permit any part of the Property and the Improvements thereon to be owned by a telephone utility or any other entity of a type where the assessed value of taxable property of such entity is not treated as located within the City of Des Moines in its entirety, or apply for a deferral of property tax on the Property pursuant to any present or future statute or ordinance other than tax abatement pursuant to the City's urban revitalization plan as applicable.

7. Required Terms in any Conveyance. Developer shall endeavor to include in every deed, lease, sublease and other instrument conveying all or any part of Developer's interest in any portion of the Property, a provision identifying the terms, conditions, restrictions and requirements of these covenants and acknowledging that the City may enforce the terms, conditions, restrictions and requirements of these Covenants against Developer's successors and assigns to the same extent as against Developer. Developer

shall cooperate in good faith in the City's enforcement of the requirements of these Covenants against Developer's successors and assigns to any interest in the Property.

8. Covenants; Binding Upon Successors in Interest. It is intended that the terms of these Covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided herein, be binding, only to the extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, against Developer, its successors and assigns and every successor in interest to any portion of the Property and the Improvements erected thereon, or any part thereof or any interest therein, and any party in possession or occupancy of any of such Property, or any part thereof.
9. City's Rights to Enforce. In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in these covenants, both for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the City without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.
10. Warranty of Title. Developer does hereby covenant with City that Developer holds legal and equitable title to the Property.

ARTICLE 4. ECONOMIC DEVELOPMENT ASSISTANCE.

Sec. 4.1. Consideration for Agreement. In consideration of Developer's obligation to construct the Improvements in accordance with this Agreement and in consideration of the economic development and employment opportunities that are anticipated to be retained and created in and around the Project Area as a result of such undertaking, City shall cause to be provided the economic incentives identified in this Article.

Sec. 4.2. Economic Development Grant. A. Subject to Sections 4.3, 4.4, 4.5 and 4.6 of this Agreement, City shall pay to Developer an Economic Development Grant for the Improvements. Said Grant shall be equal to lesser of Two-Hundred Seventy-Five Thousand and no/100 U.S. Dollars (\$275,000.00; cash basis) or the actual amount paid by Developer for fire suppression sprinkling systems installed in the Improvements, as documented by Developer to City through invoices provided by independent third-party contractor(s), proof of payment made by Developer, and all other form(s) of documentation required by the City's Office of Economic Development.⁴ Said Grant shall be paid by City to Developer within sixty (60) calendar days of the City's issuance of the Certificate of Completion for the Improvements pursuant to Section 2.4 above, and shall be paid from the City's Economic Development Enterprise Fund which will thereafter be reimbursed by tax increment generated within the SE Agribusiness Urban Renewal Area.

⁴ See condition precedent requirements for issuance of Certificate of Completion, Section 2.4 above.

Sec. 4.3. Conditions Precedent. A. The City's obligation to advance the Economic Development Grant shall be subject to the following conditions precedent:

1. Developer has substantially completed the Improvements and has qualified for issuance of the Certificate of Completion pursuant to Section 2.4.
2. Developer is not in breach of any provisions of this Agreement, or the Declaration of Covenants, and any prior default has been cured within the period allowed by Sections 5.1 and/or 5.2.

Sec. 4.4. Source of Funding. A. The Economic Development Grant shall be paid by City solely from the City's Economic Development Enterprise Fund and reimbursed from the special fund financed by the division of revenue pursuant to Iowa Code §403.19(2) from taxes levied on the Urban Renewal Area. The obligations of City under this Agreement shall not constitute a general obligation of the City.

B. The City represents, warrants and agrees that for so long as Developer is not in default under this Agreement and the City is obligated to pay the Economic Development Grant in accordance with the terms of this Agreement:

1. City shall not repeal the designation of the Property or any part thereof as being within an urban renewal area pursuant to Iowa Code §403.5.
2. City shall not repeal nor amend any ordinance in any manner that impairs the City's ability to pay the Economic Development Grant as contemplated by this Agreement.
3. City will timely certify to Polk County the amount of the Economic Development Grant for reimbursement of the City's Economic Development Enterprise Fund from the special fund for the Project in accordance with Iowa Code Section 403.19(6).

Sec. 4.5. Non-appropriation. A. Notwithstanding anything in this Agreement to the contrary, the obligation of the City to pay the Economic Development Grant shall be an obligation limited to currently budgeted funds, and not a general obligation or other indebtedness of the City or a pledge of its full faith and credit under the meaning of any constitutional or statutory debt limitation, and shall be subject in all respects to the right of non-appropriation reserved by the City Council as provided in this Section. City may exercise its right of non-appropriation as to the amount of the grant to be paid during any fiscal year during the term of this Agreement without causing a termination of this Agreement. The right of non-appropriation shall be exercised only by resolution affirmatively declaring the City's election to non-appropriate funds otherwise required to be paid to Developer in the next fiscal year under this Agreement.

B. In the event the City Council of City elects to not appropriate sufficient funds in the budget for any future fiscal year for the payment in full of the Economic Development Grant due and payable in that fiscal year, then the City shall have no further obligation to Developer for the payment of any portion of said Grant due in the next fiscal year which cannot be paid with the funds then appropriated for that purpose.

C. The right of non-appropriation reserved to the City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to pay the

Economic Development Grant shall not constitute a legal indebtedness of the City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, cause, or result in the creation of, such a legal indebtedness of the City, the application and enforcement of any such provision(s) shall be deemed suspended as of the date of such determination, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no event of default shall be deemed to have occurred as a result of the suspension of any such provision(s). If any provision of this Agreement is so suspended, the suspension shall not affect other provisions or application of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Agreement are severable.

D. The Urban Renewal Covenants in Article 3 of this Agreement shall not be applicable to conduct by the Developer and its successors and assigns in ownership or possession of the Property during any fiscal year in which the Economic Development Grant will not be paid in full due to the City's exercise of the right of non-appropriation under this Article. However, any conduct in violation of the Urban Renewal Covenants shall be promptly remedied in any subsequent fiscal year in which the City appropriates sufficient funds to fully pay the Economic Development Grant due in that fiscal year.

Sec. 4.6. Limitation on Use of Funds. The Development Grants may be used solely for construction of privately-owned Improvements. Developer agrees and acknowledges that Developer may not fund any public portion of the Improvements, if any, from any or all proceeds of such Grants, and that such usage may violate public bidding requirements as well as constitute a breach of this Agreement.

ARTICLE 5. REMEDIES.

Sec. 5.1. In General. A. Except as otherwise specifically provided in this Agreement, in the event of a default by either party under this Agreement, the aggrieved party shall, by written Notice of Default to the party in default, demand that it proceed immediately to cure or remedy such default, and, in any event, complete such cure or remedy within forty-five (45) days (or such other time as may be specifically provided herein) after receipt of such notice. Any default on an obligation to pay money shall be cured within twenty (20) business days after receipt of such notice. Notwithstanding the foregoing, if any non-monetary default reasonably requires more than forty-five (45) days to cure, such default shall not constitute a breach of this Agreement if the defaulting party commences to cure the default promptly upon receipt of the notice of the default and with due diligence thereafter continuously prosecutes such cure to completion, which completion shall occur no more than 100 days after receipt of such notice.

B. If a notice of default is given as provided above and action to cure or remedy the default is not promptly taken or not diligently pursued, or if the default is not cured or remedied within the time allowed, then the party in default may be declared to be in breach of this Agreement by the aggrieved party. In the event of a breach of this Agreement, in addition to such other rights as the aggrieved party may have hereunder, the aggrieved party may institute proceedings for damages for breach of contract. In any claim, action or civil proceeding wherein damages are sought for breach of this Agreement, City shall have the same rights and liabilities as a private non-governmental party

for any breach of this Agreement.

Sec. 5.2. Specific Remedies. Delay in the Completion of the Improvements. Developer acknowledges and agrees that if the Improvements are not timely constructed it will cause the City to incur damages resulting from the delay in the generation of incremental property tax revenues and in the generation of the economic development and employment opportunities that are expected to be retained and created. This Section is intended to establish appropriate remedies for delays in the construction of the Improvements.

1. *Minor Delay in the Completion of the Improvements to the Property.* If construction of Improvements is not substantially completed so as to qualify for issuance of the Certificate of Completion by the deadline set forth in Section 2.4, and such nonconformity with the requirements of this Agreement is remedied within six months after such applicable deadline, then such delay in completing the Improvements shall not be considered a default under this Agreement.
2. *Major Delay in Completion of the Improvements to the Property.* If construction of the Improvements is not substantially completed so as to qualify for issuance of the Certificate of Completion by the date set forth in Section 2.4, and such nonconformity with the requirements of this Agreement is not remedied within six months after such deadline, then it shall be considered a major default of this Agreement and City may elect to give Notice of Default pursuant to Section 5.1. In the event such default is not remedied as allowed by Section 5.1, City may elect to terminate this Agreement, in which event:
 - i) The City shall have no obligation under Article 4 of this Agreement to pay the Economic Development Grant;
 - ii) Developer shall have no obligation under this Agreement to construct or maintain Improvements to the Property; and
 - iii) The City shall file a Termination Certificate as provided in Section 6.7.

Sec. 5.3. Other Rights and Remedies, No Waiver by Delay. City and Developer shall have the right to institute such actions or proceedings as each may deem desirable for effectuating the purposes of this article. Provided, that any delay by City or Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or to deprive either City or Developer of or limit such rights in any way; it being the intent of this provision that City and Developer should not be constrained to exercise such remedies at a time when such party may still hope otherwise to resolve the problems created by the default involved so as to avoid the risk of being deprived of or limited in the exercise of such remedies because of concepts of waiver, laches, or otherwise. No waiver in fact made by City or Developer with respect to any specific default by the other party shall be considered or treated as a waiver of the rights of City or Developer with respect to any other defaults by the other party or with respect to the particular default, as the case may be, except to the extent specifically waived in writing by City or Developer.

Sec. 5.4. Enforced Delay in Performance. Except for an obligation to pay money to the other pursuant to this Agreement, neither City nor Developer shall be considered in breach of, or in default of, its obligations with respect to this Agreement, or any portion thereof, including redevelopment, or the beginning and completion of construction of the Improvements, in the event

of an enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, temporary injunctions, acts of God, acts of the public enemy, war or terrorism, acts of government (provided City may not rely upon its own acts as reason for delay), acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes or other labor disruptions, freight embargoes, economic or financial market collapse causing a national loss of available financing upon commercially reasonable terms, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of City or of Developer, as the case may be, shall be extended for the period of the enforced delay: Provided, that the party seeking the benefit of the provisions of this article shall: i) within twenty (20) days after the beginning of any such enforced delay, have notified the other party thereof in writing, and of the cause or causes thereof, and setting forth the anticipated extension required as a result of the enforced delay; and, ii) exercise reasonable diligence to mitigate the event and the impact thereof.

Sec. 5.5. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any default or breach by the other party. No waiver made by either party shall be deemed a waiver in any respect in regard to any other rights of the party making the waiver or of any other obligations of the other party.

ARTICLE 6. MISCELLANEOUS.

Sec. 6.1. Representatives Not Individually Liable. No member, official, or employee of City or Developer shall be personally liable in the event of any default or breach by either party under this Agreement, or for any amount which may become due or on any obligations under the terms of this Agreement.

Sec. 6.2. City Not a Guarantor, Surety or Partner. City is not a guarantor or surety for the redevelopment nor for any indebtedness incurred by Developer. It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties hereto, or as constituting Developer as a contractor, agent or representative of City for any purpose of in any manner whatsoever.

Sec. 6.3. Interpretation of Contract. A. *Documents to be Considered Together*. The approved Conceptual Development Plan and any approved changes or modifications thereto shall be incorporated into this Agreement effective as of the date of such approvals. Any interpretation of the provisions of this Agreement shall be made by construing this Agreement and all Exhibits hereto together with the approved Conceptual Development Plan and any approved amendments thereto, if any. Copies of all such documents shall be placed on permanent file in the Office of the City Clerk, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

B. *Choice of Laws*. This Agreement shall be construed in accordance with the laws of the State of Iowa.

C. *Timing.* Time is of the essence in the performance of this Agreement.

D. *Non-working Days.* If the last date for performing any act required by this Agreement falls upon a weekend day or holiday, then the time for performing such act shall be extended to the next following working day.

E. *Merger.* None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to either party, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

F. *Construction.* Headings are included for convenience only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement. All section references, unless otherwise clearly indicated, are to sections in this Agreement. Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context. This Agreement is not to be construed more strictly against a party hereto merely because it may have been drafted or prepared by such party or its counsel, this Agreement being the product of negotiation.

G. *Agreement Binding on Successors in Interest.* This Agreement shall inure to the benefit of and shall be binding upon successors and assigns of the parties.

H. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

Sec. 6.4. WAIVER OF JURY TRIAL. THE CITY AND DEVELOPER EACH HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OBLIGATIONS OF THE CITY, ANY RELATED DOCUMENTS, THE OBLIGATIONS THEREUNDER OR ANY TRANSACTIONS ARISING THEREFROM OR FROM ANY AMENDMENTS THERETO. THIS WAIVER IS MADE ON BEHALF OF AND APPLIES TO ALL EMPLOYEES, OFFICERS, OWNERS, PRINCIPALS AND AGENTS OF BOTH THE CITY AND THE DEVELOPER. THIS WAIVER APPLIES TO ALL CLAIMS WHETHER MADE AT LAW OR EQUITY AND WHETHER BASED IN CONTRACT OR TORT THAT ARE MADE BY ANYONE IN RELATIONSHIP TO THE AGREEMENT OR IN RELATIONSHIP TO ANY ASPECT OF THE PROJECT OR CONSTRUCTION OF OR OPERATION OF THE IMPROVEMENTS. THE DEVELOPER AND THE CITY EACH REPRESENT TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

Sec. 6.5. *Notices.* A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested; delivered personally; or sent by overnight courier service, as follows:

(a) in the case of Developer, addressed to: NMDP Holdings LLC
ATTN: Adam Peterson, President
220 SE 6th Street, Suite 100
Des Moines, IA 50309

(b) in the case of City, addressed to:

Attn: Development Services Director
c/o Office of Economic Development
City of Des Moines
602 Robert D. Ray Drive
Des Moines, Iowa, 50309

or to such other address, Department, or individual as either may, from time to time, designate in writing and forward to the other as provided in this Section.

Sec. 6.6. Recordation. City shall cause this Agreement (exclusive of Exhibit "B") and Exhibit "A" hereto to be promptly recorded at the Developer's expense with the Polk County Recorder. A copy of this Agreement, including all the Exhibits, shall be maintained and available for public inspection in the office of the City Clerk of City.

Sec. 6.7. Termination Certificate. Upon the termination of this Agreement as provided herein or upon satisfaction by the parties of all their obligations under this Agreement, and request by Developer, City shall issue to Developer a Termination Certificate certifying that Developer has satisfied all its obligations under this Agreement. Such Termination Certificate shall be in recordable form to permit it to be recorded in the records of the Polk County Recorder. Developer may utilize the Termination Certificate as evidence of its compliance with and satisfaction of all its obligations under this Agreement. In the event that a Termination Certificate is filed due to default and failure to cure under Article 5 of this Agreement, the City may record a Termination Certificate which shall not be used to demonstrate or certify that the defaulting party's obligations hereunder have been fulfilled.

Sec. 6.8. Amendment. No amendment of this Agreement is binding unless set forth in writing, duly signed by the parties hereto.

Sec. 6.9. Urban Renewal Amendment. City shall diligently proceed with all necessary actions to promptly consider adoption, in conformance with applicable law, of an amendment to the Urban Renewal Plan for the Project Area to include the construction of the Improvements as an urban renewal project under Iowa Code Section 403.5(5)(b). Notwithstanding anything in this Agreement to the contrary, this Agreement, and Developer's obligations hereunder, shall be of no force or effect unless and until the City adopts such an amendment. If for any reason the City has not adopted such an amendment by June 1, 2022, Developer may, any time thereafter and prior to adoption of such an amendment, and notwithstanding any cure period provided under this Agreement, unilaterally and upon notice to City terminate this Agreement, with each party hereto thereafter relieved of further obligation or liability that does not expressly survive termination of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on or as of the day first above written.

NMDP HOLDINGS LLC

By: _____
Its: _____

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on _____, 2022, by _____ (name), as _____ (title) of NMDP Holdings LLC, an Iowa limited liability company, on behalf of whom the instrument was executed.

Notary Public in the State of Iowa
My commission expires: _____

CITY OF DES MOINES, IOWA

ATTEST:

By: _____
P. Kay Cmelik, City Clerk

By: _____
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 2022, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 22-_____ of City Council on the ___ day of _____, 2022, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Notary Public in the State of Iowa
My commission expires: _____

Exhibit "A"
Legal Description of the Property

The East 522.0 feet, Lot Three (3) of the OFFICIAL PLAT OF THE SOUTHWEST FRACTIONAL QUARTER (SW FRL $\frac{1}{4}$) OF SECTION 7, TOWNSHIP 78, RANGE 23 West of the 5th P.M., now included in and forming a part of the City of Des Moines, Polk County, Iowa; AND Lot Four (4) in the OFFICIAL PLAT OF THE SOUTHWEST FRACTIONAL QUARTER (SW FRL $\frac{1}{4}$) OF SECTION 7, TOWNSHIP 78 NORTH, RANGE 23 West of the 5th P.M., now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Exhibit "B"
Conceptual Development Plan

(Attach a copy of the approved Conceptual Development Plan)