

PRAIRIE CENTER METROPOLITAN DISTRICT NO. 3

141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898
Tel: 303-987-0835 · 800-741-3254
Fax: 303-987-2032

NOTICE OF A REGULAR MEETING AND AGENDA

<u>Board of Directors:</u>	<u>Office:</u>	<u>Term/Expiration:</u>
Michael Tamblyn	President	2022/May 2022
Mark A. Waggoner	Vice President/Treasurer	2023/May 2023
VACANT		2023/May 2022
VACANT		2022/May 2022
VACANT		2022/May 2022
Ann E. Finn	Secretary	

DATE: April 6, 2022

TIME: 4:00 p.m.

LOCATION: *This meeting will be held via Zoom without any individuals (neither District representatives nor the general public) attending in person. The meeting can be joined through the directions below:*

Zoom information:

<https://us02web.zoom.us/j/87490742020?pwd=S0s5Yjh6K3M3azRUUTNVR01Ba1p1QT09>

Meeting ID: 874 9074 2020

Passcode: 599857

Dial In: 1-669-900-6833

One tap mobile

+16699006833,,87490742020#,,, *599857#

I. ADMINISTRATIVE MATTERS

A. Present Disclosures of Potential Conflicts of Interest.

B. Confirm quorum; Approve agenda; Confirm location of meeting and posting of meeting notices. Designate location for posting of 24-hour notices.

C. Discuss status of the May 3, 2022 Regular Directors' Election.

D. **CONSENT AGENDA** – These items are considered to be routine and will be approved and/or ratified by one motion. There will be no separate discussion of these items unless a Board member so requests; in which event, the item will be removed from the Consent Agenda and considered in the Regular Agenda.

- Approve Minutes of the December 1, 2021 Special Meeting (enclosure).
- Ratify approval of payment of claims for the period beginning December 1, 2021 through March 31, 2022 totaling \$900,828.63 (enclosure).

- Ratify approval of Service Agreement for Property Maintenance for Park on Peregrine between the District and Vargas Property Services, Inc. (enclosure).
 - Ratify approval of Canvas at Brighton Regional Trail Reimbursement Agreement by and between the District, Canvas PC Owner, LLC, and THF Prairie Center Development, L.L.C. (enclosure).
-

II. PUBLIC COMMENTS

- A. Members of the public may express their views to the Board on matters that affect the District. Comments will be limited to three (3) minutes.
-

III. FINANCIAL MATTERS

- A. Consider approval of 2021 Audit and authorize execution of Representations Letter (to be distributed).
-

IV. LEGAL MATTERS

- A. Ratify approval of First Amendment to Prairie Center Village V Subdivision Filing No. V Development Agreement by and between the City of Brighton, the District, and THF Prairie Center Development, L.L.C. (enclosure).
-
- B. Discuss potential formation of new Prairie Center districts. Authorize any necessary actions in connection therewith.
-

V. CAPITAL IMPROVEMENTS

- A. Discuss potential public road extension projects for Prairie Center Retail Two and Prairie Center Retail Three (“Projects”) and available funding for the Projects.
-
- B. Discuss retail development and potential revenue for the District.
-
- C. Other.
-

VI. OPERATIONS

A. _____

VII. OTHER MATTERS

A. _____

VIII. ADJOURNMENT **THE NEXT REGULAR MEETING IS SCHEDULED FOR AUGUST 3, 2022.**

RECORD OF PROCEEDINGS

**MINUTES OF A SPECIAL MEETING OF
THE BOARD OF DIRECTORS OF THE PRAIRIE CENTER
METROPOLITAN DISTRICT NO. 3 (the “District”)
HELD
DECEMBER 1, 2021**

A special meeting of the Board of Directors of the Prairie Center Metropolitan District No. 3 (referred to hereafter as “Board”) was convened on Wednesday, the 1st day of December, at 4:00 P.M. This District Board meeting was held and properly noticed to be held via Zoom video/telephone conference. The meeting was open to the public.

ATTENDANCE

Directors In Attendance Were:

Michael Tamblyn (via Zoom)
Mark A. Waggoner (via Zoom)

Also In Attendance Were:

Ann E. Finn; Special District Management Services, Inc. (via Zoom)

Erica Montague, Esq.; McGeady Becher P.C (via Zoom)

Thuy Dam and Cecilia Wang; CliftonLarsonAllen LLP (via Zoom)

DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Disclosures of Potential Conflicts of Interest: The Board discussed the requirements pursuant to the Colorado Revised Statutes to disclose any potential conflicts of interest or potential breaches of fiduciary duty to the Board and to the Secretary of State. Attorney Montague requested members of the Board disclose any potential conflicts of interest with regard to any matters scheduled for discussion at this meeting, and incorporated for the record those applicable disclosures made by the Board members prior to this meeting in accordance with the statute. It was further noted by Attorney Montague that all Directors’ Disclosure Statements have been filed and no additional conflicts were disclosed.

ADMINISTRATIVE MATTERS

Quorum / Meeting Location / Posting of Meeting Notices: Attorney Montague noted that a quorum was present. The Board entered into a discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District’s board meeting. The Board determined that the meeting would be held via Zoom video/telephone conference without any individuals (neither District Representatives nor the General Public) attending in person. Ms. Finn reported that notice was duly posted and that no objections to the video/telephonic manner

RECORD OF PROCEEDINGS

of the meeting or any requests that the video/telephonic manner of the meeting be changed have been received from any taxpaying electors within the District boundaries.

Agenda: Ms. Finn distributed for the Board's review and approval a proposed Agenda for the District's special meeting.

Following discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Agenda was approved, as presented.

Consent Agenda: The Board considered the following actions:

- Approve Minutes of the April 7, 2021 Special Meeting.
- Ratify approval of payment of claims for the period beginning April 1, 2021 through November 23, 2021 totaling \$455,475.10.
- Authorize District Manager to post transparency notice on the District Website and Special District Association Website pursuant to Section 32-1-809, C.R.S.

Following review, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board approved and/or ratified approval of, as appropriate, the above actions.

Resolution No. 2021-12-01; Resolution Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices: The Board reviewed Resolution No. 2021-12-01; Resolution Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices.

The Board determined to meet on April 6, August 3, and December 7, 2021 via Zoom.

Following discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-12-01; Resolution Establishing Regular Meeting Dates, Time and Location, and Designating Location for Posting of 24-Hour Notices.

PUBLIC COMMENT

There was no public comment.

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FINANCIAL MATTERS

Unaudited Financial Statements: Ms. Dam reviewed with the Board the unaudited financial statements for the period ending September 30, 2021.

Following discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board accepted the unaudited financial statements for the period ending September 30, 2021.

Engagement of Wipfli LLP for Preparation of 2021 Audit: The Board considered the engagement of Wipfli LLP for the preparation of the 2021 audit in the amount of \$4,700.

Following review and discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board approved the engagement of Wipfli LLP for the preparation of the 2021 audit, in the amount of \$4,700.

2021 Budget Amendment Hearing: The President opened the public hearing to consider the amendment of the 2021 Budget and discuss related issues.

It was noted that publication of Notice stating that the Board would consider the amendment of the 2021 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District. No written objections were received prior to this public hearing. There were no comments from the public in attendance and the public hearing was closed.

Following review and discussion, Director Tamblyn moved to adopt Resolution No. 2021-12-02 to Amend the 2021 Budget, Director Waggoner seconded the motion and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-12-02 to Amend the 2021 Budget. A copy of the adopted Resolution is attached hereto and incorporated herein by this reference.

2022 Budget Hearing: The President opened the public hearing to consider the proposed 2022 Budget and discuss related issues.

It was noted that publication of Notice stating that the Board would consider adoption of the 2022 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District. No written objections were received prior to this public hearing. No public comments were received, and the public hearing was closed.

Ms. Dam reviewed the estimated 2021 expenditures and the proposed 2022 expenditures. It was noted that no mill levy will be imposed.

RECORD OF PROCEEDINGS

Following discussion, the Board considered the adoption of Resolution No. 2021-12-03 to Adopt the 2022 Budget and Appropriate Sums of Money. Upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, Resolution No. 2021-12-03 was adopted, as discussed, and execution of the Certification of Budget was authorized, subject to receipt of final Certification of Assessed Valuation from the County on or before December 10, 2021. The District Accountant was directed to transmit the Certification of Budget to the Division of Local Government not later than January 30, 2022. A copy of the adopted Resolution is attached to these Minutes and incorporated herein by this reference.

DLG-70 Mill Levy Certification: Ms. Dam discussed with the Board the DLG-70 Mill Levy Certification form.

Following discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board authorized the District Accountant to prepare and sign the DLG-70 mill levy certification form, for certification to the Board of County Commissioners and other interested parties.

Preparation of the 2023 Budget: The Board discussed preparation of the 2023 Budget.

Following discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner, and upon vote, unanimously carried, the Board appointed CliftonLarsonAllen LLP to prepare the 2023 Budget, and directed that the 2023 Budget be the same as the 2022 Adopted Budget, unless a Board Member provides input to otherwise adjust those assumptions.

Master Service Agreement for Accounting Services between the District and CliftonLarsonAllen LLP: Ms. Dam reviewed with the Board the Master Service Agreement for Accounting Services between the District and CliftonLarsonAllen LLP.

Following discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board approved the Master Service Agreement for Accounting Services between the District and CliftonLarsonAllen LLP.

LEGAL MATTERS

May 3, 2022 Regular Directors' Election: The Board discussed the May 3, 2022 Regular Directors' election regarding new legislative requirements and related expenses for the same.

RECORD OF PROCEEDINGS

Following review and discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-12-04; Resolution Calling a Regular Election for Directors on May 3, 2022, appointing Ann Finn as Designated Election Official (“DEO”), and authorizing the DEO to perform all tasks required for the conduct of a mail ballot election.

CAPITAL IMPROVEMENTS

Construction Status Report for Prairie Center Retail 3 Project: Director Tamblyn updated the Board regarding the current development.

OPERATIONS

Service Agreement between the District and Alliance Commercial Maintenance Services, Inc.: The Board reviewed the Service Agreement between the District and Alliance Commercial Maintenance Services, Inc. for asphalt repair work.

Following discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board approved the Service Agreement between the District and Alliance Commercial Maintenance Services, Inc. for asphalt repair work.

Service Agreement between the District and Pinnacle Landscaping: The Board reviewed the Service Agreement between the District and Pinnacle Landscaping for detention pond maintenance services.

Following discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board approved the Service Agreement between the District and Pinnacle Landscaping for detention pond maintenance services.

Service Agreement between the District and Snow Pros, Inc., d/b/a Site Source CAs: The Board reviewed the Service Agreement between the District and Snow Pros, Inc., d/b/a Site Source CAM for 2022 snow removal services.

Following discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board approved the Service Agreement between the District and Snow Pros, Inc., d/b/a Site Source CAM for 2022 snow removal services.

Service Agreement with Colorado Lighting, Inc.: The Board reviewed the Service Agreement with Colorado Lighting, Inc. for site lighting services.

RECORD OF PROCEEDINGS

Following discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board approved the Service Agreement with Colorado Lighting, Inc. for site lighting services.

Service Agreement with Vargas Property Services, Inc.: The Board reviewed the Service Agreement with Vargas Property Service, Inc. for landscape maintenance services.

Following discussion, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the Board approved the Service Agreement with Vargas Property Services, Inc. for landscape maintenance services, subject to final approval by Director Tamblyn.

OTHER MATTERS

There were no other matters.

ADJOURNMENT

There being no further business to come before the Board at this time, upon motion duly made by Director Tamblyn, seconded by Director Waggoner and, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By _____
Secretary for the Meeting

Prairie Center Metropolitan District No. 3

Check List

All Bank Accounts

December 1, 2021 - March 31, 2022

Check Number	Check Date	Payee	Amount
Vendor Checks			
1674	12/15/21	CliftonLarsonAllen LLP	7,592.23
1675	12/15/21	CO Special Dist. Prop & Liab Pool	32,590.00
1676	12/15/21	Colorado Lighting, Inc,	5,475.16
1677	12/15/21	McGeady Becher, PC	1,571.05
1678	12/15/21	Prairie Management LLC	3,000.00
1679	12/15/21	Redland Consulting Group	4,020.00
1680	12/15/21	Snow Pros, Inc	17,367.85
1681	12/15/21	Special District Mgmt. Services, Inc	2,457.82
1682	12/15/21	Utility Notification Center of CO	163.68
1683	12/15/21	Vargas Property Service	14,947.82
1684	12/23/21	Alliance CMS	166,730.00
1685	01/14/22	CliftonLarsonAllen LLP	8,740.67
1686	01/14/22	Colorado Lighting, Inc,	314.40
1687	01/14/22	JR Engineering LLC	740.00
1688	01/14/22	McGeady Becher, PC	3,779.49
1689	01/14/22	Prairie Management LLC	3,000.00
1690	01/14/22	Redland Consulting Group	19,647.67
1691	01/14/22	Special District Mgmt. Services, Inc	1,663.20
1692	01/14/22	Utility Notification Center of CO	46.20
1693	01/14/22	Vargas Property Service	13,845.10
1694	02/15/22	City of Brighton	353,863.40
1695	02/15/22	CliftonLarsonAllen LLP	9,634.85
1696	02/15/22	Colorado Community Media	58.84
1697	02/15/22	Colorado Lighting, Inc,	15.00
1698	02/15/22	Domain Listings	238.00
1699	02/15/22	McGeady Becher, PC	2,518.60
1700	02/15/22	Prairie Management LLC	3,000.00
1701	02/15/22	Redland Consulting Group	8,690.91
1702	02/15/22	Snow Pros, Inc	7,716.00
1703	02/15/22	Special District Mgmt. Services, Inc	2,200.19
1705	02/15/22	Utility Notification Center of CO	75.40
1706	02/15/22	Vargas Property Service	8,325.10
1707	03/15/22	CliftonLarsonAllen LLP	10,216.50
1708	03/15/22	Colorado Lighting, Inc,	1,012.50
1709	03/15/22	McGeady Becher, PC	692.10
1710	03/15/22	Prairie Management LLC	3,000.00
1711	03/15/22	Redland Consulting Group	8,000.00
1712	03/15/22	Snow Pros, Inc	146,722.00
1713	03/15/22	Special District Association	3,477.58
1714	03/15/22	Special District Mgmt. Services, Inc	1,502.80
1715	03/15/22	Utility Notification Center of CO	67.60
1716	03/15/22	Vargas Property Service	8,325.10
ACH	03/23/22	United Power	2,525.73
ACH	02/23/22	United Power	21.81
ACH	03/03/22	CO Special Dist. Prop & Liab Pool	2,016.00
ACH	02/23/22	United Power	3,094.41
ACH	01/25/22	United Power	3,171.30
ACH	12/27/21	United Power	2,954.57
Vendor Check Total			<u>900,828.63</u>
Check List Total			<u><u>900,828.63</u></u>

Check count = 48

**SERVICE AGREEMENT FOR
PROPERTY MAINTENANCE FOR PARK ON PEREGRINE**

THIS SERVICE AGREEMENT FOR PROPERTY MAINTENANCE FOR PARK ON PEREGRINE (“Agreement”) is entered into and effective as of the 2nd day of December, 2021, by and between PRAIRIE CENTER METROPOLITAN DISTRICT NO. 3, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and VARGAS PROPERTY SERVICES, INC., a Colorado corporation (the “Consultant”) (each a “Party” and, collectively, the “Parties”).

RECITALS

A. The District was organized pursuant to the laws of the State of Colorado in order to construct, operate and maintain certain public facilities and improvements in accordance with its service plan.

B. Pursuant to Section 32-1-1001(1)(d)(I), C.R.S., the District is permitted to enter into contracts and agreements affecting the affairs of the District.

C. The Consultant has experience in providing the services, as set forth in Exhibit A hereto, attached and incorporated herein (the “Services”), and is willing to provide such Services to the District for reasonable consideration.

D. The Parties desire to enter into this Agreement to establish the terms by which the Consultant will provide the Services to the District.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I. CONSULTANT DUTIES AND AUTHORITY

1.1 Duties of Consultant. The Consultant shall:

(a) Perform the Services, safely and in accordance with the highest standard of care, skill, and diligence provided by a professional consultant in performance of work similar to the Services.

(b) Be properly qualified to perform the Services. The Consultant does hereby warrant that the quality of the Services shall be as specified in this Agreement, shall conform in all respects to the requirements of this Agreement and shall be free of defects and deficiencies.

(c) Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required under Section 4.2 hereof.

(d) Advise the District of the status of the Services required by this Agreement on a regular basis and work in coordination with the District's consultants to assure that the District has the most complete information available for the exercise of the District's powers and discretionary authority.

(e) Refrain from entering into any contract, oral or written, in the name of the District, and from incurring any debt, liability or obligation for or on behalf of the District. All obligations incurred by the Consultant shall be obligations of the Consultant and the Consultant shall hold the District harmless therefrom.

1.2 Limitations on Authority.

(a) The Consultant shall have no right or authority, expressed or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement or specifically authorized or ratified by the board of directors of the District as reflected in the minutes of the District board meetings. The Consultant shall at all times conform to the stated policies established and approved by the District.

(b) Independent Contractor Status. The Consultant is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate the Consultant or any of its employees, agents, subcontractors or suppliers as employees of the District. The Services to be performed by the Consultant shall be at its sole cost, risk and expense, and no part of the cost thereof shall be charged to the District, except the payments to be made by the District to the Consultant for the Services performed as provided herein. The District shall not be responsible for the Consultant's means, methods, techniques, sequences or procedures of work or for safety precautions incident thereto. **The Consultant is not entitled to workers' compensation benefits and the Consultant is obligated to pay federal and state income taxes on moneys earned pursuant to this Agreement.**

1.3 Compliance with Applicable Law. The Consultant shall provide the Services set forth herein in full compliance with all applicable laws, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction over the activities of the District.

1.4 No Right or Interest in District Assets. The Consultant shall have no right or interest in any of the District's assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

1.5 Certification of Compliance with Illegal Alien Statute. By its execution hereof, the Consultant confirms and ratifies all of the certifications, statements, representations and warranties set forth in **Exhibit B** attached hereto and made a part hereof by this reference.

1.6 Work Product. "**Work Product**" shall consist of all written materials maintained by the Consultant in connection with performance of this Agreement, including, but not limited to, all test results, logs, surveys, maps, plans, drawings, specifications, reports, PDF formatted electronic files and other documents, in whatever form. The Consultant shall maintain

reproducible copies of any test results and logs which it obtains and shall make them available for the District's use, and shall provide such copies to the District upon request at reasonable commercial printing rates. Consultant agrees all right, title and interest in the Work Product is and shall remain the property of the District. If requested by the District, Consultant shall execute and deliver such documents as shall be necessary in the District's sole discretion, to assign, transfer and convey all rights in the Work Product to the District or its assignee. If Consultant fails to execute any documents required under this Section 1.6, then Consultant hereby irrevocably appoints the District its attorney-in-fact for the purpose of executing any required transfers of ownership or interests and any other documents necessary to effectuate this Section 1.6. Further, all Work Product, whether in paper or electronic form, reproductions thereof, or any information or instruments derived therefrom, shall be provided to the District immediately upon termination of this Agreement.

II. COMPENSATION

2.1 Compensation. The Consultant shall be paid as set forth in **Exhibit A** attached hereto with a total contract amount not to exceed \$13,950.00, unless otherwise approved in advance by the District through a written change order in form substantially as attached hereto as **Exhibit C** ("Change Order").

2.2 Monthly Invoices and Payments. The Consultant shall submit to the District a monthly invoice, in a form acceptable to the District. Invoices shall be submitted and paid no more frequently than once a month.

2.3 Expenses. The Consultant is responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as set forth in **Exhibit A**, unless otherwise approved in advance by the District in writing.

2.4 Subject to Annual Budget and Appropriation; District Debt. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the District hereunder requiring budgeting and appropriation of funds is subject to annual budgeting and appropriation. Nothing herein constitutes or creates an indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation.

III. TERM AND TERMINATION

3.1 Term. The term of this Agreement shall begin on the date set forth above, and shall expire on date satisfactory completion of the Services. Extensions of this Agreement must be pursuant to a Change Order executed by both Parties.

3.2 Termination. The District may terminate this Agreement for convenience or for cause, in whole or in part, by written notice of termination given to the Consultant at least thirty (30) days prior to the effective date of such termination. The Consultant may terminate this Agreement for convenience or for cause, in whole or in part, by written notice of termination given to the District at least thirty (30) days prior to the effective date of such termination. Any termination notice provided pursuant to this Section 3.2 shall specify the extent of termination and the effective date of the same.

The District shall pay the Consultant for all Services satisfactorily performed through the termination date.

IV. INDEMNIFICATION AND INSURANCE

4.1 Indemnification. The Consultant hereby agrees to indemnify, defend and hold the District and its affiliated entities or other persons or entities designated by the District, and their respective directors, trustees, officers, members, managers, agents and employees (collectively, the “**Indemnitees**”), harmless from any and all liability for damage, including, but not limited to, the reimbursement of attorneys’ fees and costs, arising out of death or bodily injury to persons or damage to property, in such amount that is represented by the degree or percentage of negligence or fault attributable to the Consultant and/or its agents, representatives, subcontractors, or suppliers.

4.2 Insurance Requirements. The Consultant shall procure, at its sole cost and expense, the insurance coverages set forth below, which insurance shall be placed with insurance companies rated at least “A:XIII” by A.M. Best Company. The Consultant shall give notice to the District at least thirty (30) days prior to the cancellation or nonrenewal of such policies. The Consultant shall give notice to the District within five (5) business days, or as soon as practicable, of any modification of any such policies. Consultant’s cost of maintaining the insurances required hereunder shall not be considered a reimbursable expense of the Consultant. The Consultant shall, upon request, promptly furnish the District with copies of policies obtained pursuant to this Section 4.2. Prior to commencing the Services, the Consultant shall furnish the District with certificates evidencing such insurance and provided further, however, with respect to the Workers’ Compensation Insurance required below, the Consultant must furnish to the District, prior to the commencement of any Services, duly executed and validated forms as prescribed by the state authority having jurisdiction evidencing that such insurance is in full force and effect. The District shall not pay any invoices until Consultant provides the certificates evidencing such insurance and Workers’ Compensation coverage.

(a) Liability Insurance Coverage.

(i) Workers’ Compensation Insurance. A Workers’ Compensation Insurance Policy in form and substance reasonably acceptable to the District and in an amount not less than the statutory benefits, including Employer’s Liability Insurance with limits of liability of not less than (i) \$500,000 for bodily injury by accident, each accident; (ii) \$500,000 for bodily injury by disease, each employee; and (iii) \$500,000 aggregate liability for disease. The Workers’ Compensation Insurance Policy, or an endorsement to such policy, must include a waiver of subrogation in favor of the District.

(ii) Commercial General Liability Insurance. A Commercial General Liability Insurance Policy written on an occurrence basis, in form and substance reasonably acceptable to the District, which policy shall include, without limitation, the District as an additional insured, a waiver of subrogation endorsement in favor of the District, cross liability and severability of interest endorsements, endorsements providing that the coverage afforded by the

insurance policy or policies is primary and non-contributing with any other insurance maintained by or available to the District, and appropriate language providing the following coverages: Premises and Operations Liability; Personal Injury Liability; Broad Form Property Damage Liability; Contractual Liability supporting the Consultant's indemnification agreements in favor of the District; Completed Operations and Products Liability; and Independent Contractor's Protective Liability. The Commercial General Liability Insurance Policy must be written with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than \$2,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than \$2,000,000 for Completed Operations and Products Liability.

(iii) Automobile Liability Insurance. An Automobile Liability Insurance Policy written on a per accident basis, in form and substance reasonably acceptable to the District. The Automobile Liability Insurance Policy must provide coverage for all owned, hired, rented and nonowned automobiles, and must include uninsured motorist coverages. The Automobile Liability Insurance Policy must be written with a combined single limit of liability of not less than \$1,000,000 for each accident for bodily injury and/or property damage.

(iv) Excess Liability Insurance. An Excess Liability Insurance Policy written in excess of the coverages provided by the insurance policies described in the preceding Subsections 4.2(a)(i) - (iii), in form and substance reasonably acceptable to the District, which policy will include the District as additional insured. The Excess Liability Insurance Policy must be written with a combined single limit of not less than \$1,000,000 for each occurrence of bodily injury/or property damage and annual aggregate.

(b) Failure to Obtain and Obligation to Maintain Insurance. If the Consultant fails to furnish and maintain insurance as required by this Section 4.2, the District may purchase such insurance on behalf of the Consultant and deduct the cost of such insurance premium(s) from the compensation otherwise owed to the Consultant, and the Consultant shall furnish to the District any information needed to obtain such insurance. Except as otherwise expressly provided herein, all insurance policies required by the terms of this section shall be kept in full force and effect until the date of final payment to the Consultant for the Services specified in this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the foregoing insurance requirements are in no way intended to, and will not in any manner, limit or qualify the liabilities and/or indemnities assumed by the Consultant under or pursuant to this Agreement.

(c) Effect of Approval or Acceptance of Insurance. District acceptance and/or approval of any or all of the insurances required hereunder does not and shall not be construed to relieve Consultant from any obligations, responsibilities or liabilities under this Agreement.

V. MISCELLANEOUS

5.1 Assignment. The Consultant shall not assign any of its rights or delegate any of its duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and of no effect.

5.2 Modification; Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto; provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the District or the Consultant unless the same is in writing and duly executed by the Parties.

5.3 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

5.4 Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

5.5 Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the State District Court in and for the County of Adams, Colorado.

5.6 Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

5.7 Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the Consultant any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the Consultant shall be for the sole and exclusive benefit of the District and the Consultant.

5.8 Notices. All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Prairie Center Metropolitan District No. 7
c/o Special District Management Service, Inc.
141 Union Blvd., Suite 150
Lakewood, CO 80228
Phone: 303-987-0835
Email: afinn@sdmsi.com
Attn: Ann Finn

With a Copy To: McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203
Phone: (303) 592-4380
Email: legalnotices@specialdistrictlaw.com

To Consultant: Vargas Property Services, Inc.
270 Interlocken Blvd.
Broomfield, CO 80021
Phone: 303-466-9196
Email: Elena@vargasvps.com
Attn: Elena Vargas

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with FedEx or other nationally recognized overnight air courier service, upon electronic confirmation of email transmission, or three (3) business days after deposit in the United States mail. By giving the other Party hereto at least ten (10) days' written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

5.9 Default/Remedies. If either Party fails to perform any of its responsibilities, obligations or agreements to be performed in accordance with the provisions of this Agreement, and if such failure of performance continues for a period of thirty (30) days following written notice of default from the other Party (or such additional period of time as may reasonably be required to cure such default; provided that the curative action is commenced within such thirty (30) day period and is diligently and continuously pursued to completion), then the non-defaulting Party, at its option, may elect (i) to treat this Agreement as remaining in full force and effect; or (ii) terminate this Agreement as of any specified date. The non-defaulting Party shall additionally be entitled to exercise all remedies available at law or in equity. In the event of any litigation or other proceeding to enforce the terms, covenants or conditions hereof, the non-defaulting Party in any such litigation or other proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

5.10 Instruments of Further Assurance. Each Party covenants it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their obligations hereunder.

5.11 Compliance with Law. This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules, and regulations of the jurisdiction in which the Agreement is performed. The Consultant declares it has complied and will comply with all federal, state and local laws regarding business permits, certificates and licenses required to perform the Services.

5.12 Non-Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed to be a waiver of any subsequent default hereunder. Notwithstanding any provision to the contrary in this Agreement, no term or condition of this Agreement shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits or protection provided to the District under the Colorado Governmental Immunity Act.

5.13 Inurement. This Agreement shall inure to and be binding on the heirs, executors, administrator, successors, and permitted assigns of the Parties hereto.

5.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

5.15 Conflicts. If any term or provision(s) in any Exhibit attached as part of this Agreement conflicts with any term or provision(s) in the body of this Agreement, the term or provision(s) contained in the body of this Agreement shall control.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO SERVICE AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

Consultant:
VARGAS PROPERTY SERVICES, INC.

By: _____
Its: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, as _____ of Vargas Property Services, Inc.

Witness my hand and official seal.

My commission expires: _____

Notary Public

District:
**PRAIRIE CENTER METROPOLITAN
DISTRICT NO. 3**

By: _____
President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Michael Tamblyn, as President of Prairie Center Metropolitan District No. 3.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A
SCOPE OF SERVICES/COMPENSATION

Contract maintenance for 12-month period, beginning October 2021 – September 2022

\$1,162.50 per month for 12 months = \$13,950.00

EXHIBIT B
CERTIFICATION OF CONSULTANT

1. Pursuant to the requirements of Section 8-17.5-102(1), C.R.S., the Consultant hereby certifies to the District that the Consultant does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that it will participate in the E-Verify Program or Department Program (as defined in Sections 8-17.5-101(3.3) and (3.7), C.R.S.) in order to confirm the employment eligibility of all employees of the Consultant who are newly hired to perform work under the Agreement.

2. In accordance with Section 8-17.5-102(2)(a), C.R.S., the Consultant shall not:

(a) Knowingly employ or contract with an illegal alien to perform work under the Agreement; or

(b) Enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

3. The Consultant represents and warrants it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

4. The Consultant is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Agreement is in effect.

5. If the Consultant obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, the Consultant shall:

(a) Notify the subcontractor and the District within three (3) days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(b) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

6. The Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment (“**Department**”) made in the course of an investigation that the Department is undertaking, pursuant to the law.

7. If the Consultant violates any provision of Section 8-17.5-102(1), C.R.S., the District may terminate the Agreement immediately and the Consultant shall be liable to the District for actual and consequential damages of the District resulting from such termination, and the District shall report such violation by the Consultant to the Colorado Secretary of State, as required by law.

EXHIBIT C
FORM OF CHANGE ORDER

Change Order No:	Date Issued:
Name of Agreement:	
Date of Agreement:	District(s):
Other Party/Parties:	

CHANGE IN SCOPE OF SERVICES (describe):
--

CHANGE IN AGREEMENT PRICE:	CHANGE IN TERM OF AGREEMENT:
Original Price: \$ _____	Original Term: Expires _____, 20____
Increase of this Change Order: \$ _____	New Term: Expires _____, 20____
Price with all Approved Change Orders: \$ _____	Agreement Time with all Approved Change Orders: _____

APPROVED:	
By:	_____
	District

APPROVED:	
By:	_____
	Consultant

CANVAS AT BRIGHTON REGIONAL TRAIL REIMBURSEMENT AGREEMENT

This **CANVAS AT BRIGHTON REGIONAL TRAIL REIMBURSEMENT AGREEMENT** (“**Agreement**”) is made and entered into this 17th day of December, 2021, by and between **PRAIRIE CENTER METROPOLITAN DISTRICT NO. 3**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), **CANVAS PC OWNER, LLC**, a Delaware limited liability company (“**Canvas**”) and **THF PRAIRIE CENTER DEVELOPMENT, L.L.C.**, a Colorado limited liability company (“**THF**”) (individually, each a “**Party**” and collectively the “**Parties**”).

RECITALS

A. In accordance with the First Amended and Restated Service Plan for the District, approved by the City of Brighton (the “**City**”) on November 4, 2008 (as may be amended and restated from time to time, the “**Service Plan**”), the District is authorized by Title 32, Article 1, Part 1, C.R.S., to furnish certain public facilities and services, including, but not limited to, streets, water, sanitation, parks and recreation, traffic and safety control, transportation, mosquito control, fire protection, and television relay and translation improvements (the “**Public Improvements**”) to benefit property within the District’s boundaries, and/or service area, located within the City.

B. THF is the master developer of property within the Prairie Center Development (the “**Development**”).

C. The District and THF have previously entered into agreements whereby THF has agreed to fund certain capital expenses for Public Improvements and the District has agreed to repay THF therefor.

D. Canvas is concurrently acquiring certain property located within the Development from THF.

E. Canvas has incurred costs related to the design and surveying of a portion of a regional trail (the “**Design Costs**”).

F. Canvas intends to construct that portion of the regional trail as depicted in red on the plans which are attached hereto as **Exhibit A** (the “**Trail Improvements**”) and in connection therewith, Canvas will incur construction costs and expenses (the “**Construction Related Expenses**”).

G. The Trail Improvements are Public Improvements under the Service Plan and benefit the taxpayers and inhabitants of the District. The District recognizes that there will be certain efficiencies and cost savings realized by Canvas constructing the Trail Improvements concurrently with the development of its property.

H. The District agrees to reimburse Canvas in an amount not to exceed \$29,750 (the “**Maximum Design Costs Reimbursement**”) for the Design Costs associated with the Trail Improvements in accordance with and subject to the requirements of this Agreement.

I. The District agrees to reimburse Canvas its Construction Related Expenses in an amount estimated to be \$200,000.00 following its completion of the Trail Improvements (the “**Trail Improvements Reimbursement**”).

J. THF has agreed to fund any amounts to the District that the District incurs for the Trail Improvements Reimbursement that are in excess of any Trails Construction Cost Certification.

K. The District, THF and Canvas desire to set forth their respective rights, obligations, and procedures with respect to the District’s reimbursement to Canvas of the Design Costs and Construction Related Expenses, as provided herein.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

COVENANTS AND AGREEMENTS

1. Design of Trail Improvements/Payment of Design Costs Reimbursement. Canvas affirms it has designed the Trail Improvements in full conformance with all applicable design standards and specifications as established and in use by the City and other entities with proper jurisdiction pursuant to the provisions of this Agreement. A copy of the plans (the “**Trail Plans**”) created by and on behalf of Canvas are attached hereto as Exhibit A. In connection with such design, Canvas incurred Design Costs. Within ten (10) days following the mutual execution of this Agreement, Canvas shall forward copies of its contracts with the engineers, surveyors and other consultants (collectively, the “**Design Consultants**”) it engaged to create the Trail Plans. Canvas shall also deliver copies of all invoices and proof of payment of such invoices to the Design Consultants as well as such other back-up documentation as may be reasonably required by the District to confirm the amount of the Design Costs (the “**Design Reimbursement Back-Up Documentation**”). Within thirty (30) days following the date the District receives the Design Reimbursement Back-Up Documentation, the District shall pay Canvas for all such invoices submitted by Canvas for the Design Costs up to the Maximum Design Costs Reimbursement.

2. District Certification of Design Costs/True-Up. The District shall have the Design Costs certified by the District Engineer and the District Accountant within twenty (20) days following receipt of the Design Reimbursement Back-Up Documentation (the “**Design Cost Certification**”). Within thirty (30) days following the date the District receives the Design Cost Certification, if the District paid Canvas any amounts that exceed the Design Cost Certification, then THF agrees to repay District the difference between what the District paid Canvas and the amount of the Design Cost Certification. If THF fails to pay such amount within thirty (30) days following the date of the Design Cost Certification, then THF shall be in default hereunder, alternatively, to the extent the District owes THF any reimbursement on any other funding agreement, the District may reduce any amounts owing to THF under said agreement by the amount due by THF hereunder.

3. Construction of Improvements. Canvas agrees to construct, and complete the Trail Improvements in full conformance with the Trail Plans, and in conformance with any City

specifications. If the District so requests, Canvas shall provide periodic reports on the status of completion and costs of the Trail Improvements. Canvas agrees to commence construction of the Trail Improvements within 60 days following mutual execution hereof and to complete the Trail Improvements within 360 days following commencement thereof, subject to delays and extensions as a result of force majeure events.

4. Construction Contract Requirements. Any construction contract for all or any portion of the Trail Improvements shall require the contractor to provide a warranty for the period of time between initial acceptance and final acceptance of the Trail Improvements by the City, together with a security mechanism to secure the warranty approved by the District or as required by the City.

5. Transfer of Trail Improvements. Canvas shall be solely responsible for obtaining the City's preliminary acceptance of the Trail Improvements and Canvas shall be obligated to own and maintain the Trail Improvements until such time as the City has granted final acceptance thereof, whereupon, Canvas shall convey the Trail Improvements directly to the City.

6. Reimbursement of Construction Costs. Upon preliminary acceptance of the Trail Improvements by the City, Canvas shall provide the District with evidence of the actual Construction Related Expenses incurred by Canvas to complete the Trail Improvements together with reasonable back-up documentation requested by the District, such as invoices, proofs of payments, contracts, lien waivers, evidence of preliminary acceptance of the Trail Improvements from the City and other documentation reasonably requested by District as may be reasonably necessary for the District to have such cost verified by the District engineer, provided that to the extent such documentation does not exist, Canvas shall not be required to incur expense to create such documentation ("**Construction Cost Reimbursement Back-Up Documentation**"). The District shall have the Construction Costs certified by the District Engineer and the District Accountant within twenty (20) days following receipt of the Construction Cost Reimbursement Back-Up Documentation (the "**Trail Construction Cost Certification**"). The District shall, within thirty (30) days following receipt of such information evidencing the Construction Related Expenses, pay Canvas the actual amounts expended by Canvas for Construction Related Expenses.

7. [Intentionally omitted.]

8. THF Payment of Costs that Exceed Trail Construction Cost Certification. Within thirty (30) days following the date the District receives the Trail Construction Cost Certification, if the District paid Canvas any amounts that exceed the Trail Construction Cost Certification, then THF agrees to repay District the difference between what the District paid Canvas and the amount of the Trail Construction Cost Certification. If THF fails to pay such amount within thirty (30) days following the date of the Trail Construction Cost Certification, then THF shall be in default hereunder, alternatively, to the extent the District owes THF any reimbursement on any other funding agreement, the District may reduce any amounts owing to THF under said agreement by the amount due by THF hereunder.

9. Annual Appropriation. The obligations of the District contemplated in this Agreement are subject to annual appropriation and shall not be deemed to be multiple-fiscal year obligations for the purposes of Article X, Section 20 of the Colorado Constitution.

10. Representations. Canvas hereby represents and warrants to and for the benefit of the District as follows:

10.1 Canvas is a limited liability company and is qualified to do business in the State of Colorado.

10.2 Canvas has the full power and legal authority to enter into this Agreement. Neither the execution and delivery of this Agreement nor the compliance by Canvas with any of its terms, covenants or conditions is or shall become a default under any other agreement or contract to which Canvas is a party or by which Canvas is or may be bound. Canvas has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

10.3 Canvas represents that it has sufficient available funds to fulfill its obligations under this Agreement.

10.4 By its execution hereof, Canvas confirms and ratifies all of the certifications, statements, representations and warranties set forth in the Addendum attached hereto and made a part hereof by this reference.

The foregoing representations and warranties are made as of the date hereof and shall be deemed continually made by Canvas to District for the entire term of this Agreement.

11. Term; Repose. Notwithstanding anything set forth in this Agreement to the contrary, the District shall not be obligated to make any payments to Canvas for costs incurred by Canvas, but not invoiced (as evidenced by the delivery of the documents described in Section 4 above) to the District within two (2) years of the date incurred. In the event the District has not reimbursed Canvas for any portion of the Certified Construction Costs or Real Property Costs by December 31, 2058, whether invoiced or not invoiced by such date, any amount of principal and accrued interest outstanding on such date shall be deemed to be forever discharged and satisfied in full.

12. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally-recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Prairie Center Metropolitan District No. 3
c/o Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, Colorado 80228
Phone: 720-214-3965
Email: afinn@sdmsi.com
Attn: Ann Finn

With a Copy To: McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, Colorado 80203-1254
Phone: 303-592-4380
Email: pwilliams@specialdistrictlaw.com
Attn: Paula Williams

To Canvas: Canvas PC Owner, LLC
206 N. Main St.
Wheaton, Illinois 60187
Attention: Jennings B. Cooksey IV
Email: jcooksey@wmprops.com

-and-

Canvas PC Owner, LLC
c/o Welltower Inc.
4500 Dorr Street
Toledo, Ohio 43615
ATTN: Matthew McQueen, General Counsel
Telephone: (419) 214-5753
E-mail Address: mmcqueen@welltower.com

With a copy (which shall not constitute notice) to:

Shumaker, Loop & Kendrick, LLP
Attn: Kevin M. Henry, Esq.
1000 Jackson Street
Toledo, Ohio 43604
Telephone: (419) 321-1274
Email: khenry@shumaker.com

To THF: THF Prairie Center Development, L.L.C.
211 N. Stadium Blvd., Suite 201
Columbia, MO 65203
Phone: (573) 449-8323
Email: bjakubeck@thekroenkegroup.com
Attn: Milan Green Management, L.L.C.

All notices, demands, requests or other communications shall be effective upon such personal delivery, one (1) business day after being deposited with United Parcel Service or other nationally-recognized overnight air courier service, on the date of transmission if sent by electronically-confirmed or email transmission, or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address or contact information.

13. Assignment. Canvas shall not assign any of its rights or delegate any of its duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

14. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and Canvas any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and Canvas shall be for the sole and exclusive benefit of the District and Canvas.

15. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

16. Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the District Court in and for the County of Adams, Colorado.

17. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

18. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

19. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

21. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

22. Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto, provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the District or the Canvas unless the same is in writing and duly executed by the Parties hereto.

23. Certification of Compliance with Illegal Alien Statute. By its execution of this Agreement, Canvas confirms and ratifies all of the certifications, statements, representations and warranties set forth in **Exhibit B** attached hereto and made a part hereof by this reference.

24. Termination of Reimbursement Obligations. Notwithstanding any provision herein to the contrary, the District's obligations to reimburse Canvas for any and all funds advanced or otherwise payable to Canvas under and pursuant to this Agreement (whether Canvas has already advanced or otherwise paid such funds or intends to make such advances or payments in the future) shall terminate automatically and be of no further force or effect upon the occurrence of (a) Canvas's voluntary dissolution, liquidation, winding up, or cessation to carry on business activities as a going concern; (b) administrative dissolution (or other legal process not initiated by Canvas dissolving Canvas as a legal entity) that is not remedied or cured within 60 days of the effective date of such dissolution or other process; or (c) the initiation of bankruptcy, receivership or similar process or actions with regard to Canvas (whether voluntary or involuntary). The termination of the District's reimbursement obligations as set forth in this section shall be absolute and binding upon Canvas, its successors and assigns. Canvas, by its execution of this Agreement, waives and releases any and all claims and rights, whether existing now or in the future, against the District relating to or arising out of the District's reimbursement obligations under this Agreement in the event that any of the occurrences described in this section occur.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

[SIGNATURE PAGE FOLLOWS]

**[SIGNATURE PAGE TO CANVAS AT BRIGHTON REGIONAL TRAIL
REIMBURSEMENT AGREEMENT]**

IN WITNESS WHEREOF, the Parties have executed this Canvas at Brighton Regional Trail Reimbursement Agreement as of the day and year first set forth above.

PRAIRIE CENTER METROPOLITAN DISTRICT NO. 3,
a quasi-municipal corporation and political subdivision of the
State of Colorado

By: _____
Mike Tamblyn, President

Attest:

Secretary

CANVAS PC CANVAS, LLC, a Delaware limited liability
company

By: _____
Name: Jennings B. Cooksey IV
Title: Vice President

THE PRAIRIE CENTER DEVELOPMENT, L.L.C.,
a Colorado limited liability company

By: **THE Prairie Center Investors, L.L.C.,** a Missouri
limited liability company, its Manager

By: **Milan Green Management, L.L.C.,** a Missouri
limited liability company, its Manager

By: _____
Robert J. Jakubeck, Manager

EXHIBIT A
TRAIL PLANS

EXHIBIT B

CERTIFICATION OF CANVAS

1. Pursuant to the requirements of Section 8-17.5-102(1), C.R.S., CANVAS hereby certifies to the District that CANVAS does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that it will participate in the E-Verify Program or Department Program (as defined in Sections 8-17.5-101(3.3) and (3.7), C.R.S.) in order to confirm the employment eligibility of all employees of CANVAS who are newly hired to perform work under the Agreement.
2. In accordance with Section 8-17.5-102(2)(a), C.R.S., CANVAS shall not:
 - (a) Knowingly employ or contract with an illegal alien to perform work under the Agreement; or
 - (b) Enter into a contract with a subcontractor that fails to certify to CANVAS that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
3. CANVAS represents and warrants it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.
4. CANVAS is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Agreement is in effect.
5. If CANVAS obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, CANVAS shall:
 - (a) Notify the subcontractor and the District within three (3) days that CANVAS has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - (b) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that CANVAS shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
6. CANVAS shall comply with any reasonable request by the Colorado Department of Labor and Employment (“**Department**”) made in the course of an investigation that the Department is undertaking, pursuant to the law.
7. If CANVAS violates any provision of Section 8-17.5-102(1), C.R.S., the District may terminate the Agreement immediately and CANVAS shall be liable to the District for actual and consequential damages of the District resulting from such termination, and the District shall report such violation by CANVAS to the Colorado Secretary of State, as required by law.

**FIRST AMENDMENT TO
PRAIRIE CENTER VILLAGE V SUBDIVISION FILING NO. V
DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO PRAIRIE CENTER VILLAGE V SUBDIVISION FILING NO. V DEVELOPMENT AGREEMENT (this “**First Amendment**”) is made and entered into as of the ___ day of _____, 20___ (the “**Effective Date**”), by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of Adams, State of Colorado (the “**City**”); PRAIRIE CENTER METROPOLITAN DISTRICT NO. 3, a quasi-municipal corporation and municipal subdivision of the State of Colorado (the “**District**”); and THF PRAIRIE CENTER DEVELOPMENT, L.L.C., a Colorado limited liability company (“**Developer**”).

Recitals

This First Amendment is made with respect to the following facts:

A. The City, the District and Developer previously entered into that certain Prairie Center Village V Subdivision Filing No. 1 Development Agreement dated October 20, 2015, recorded in the real property records of the Clerk and Recorder of Adams County, Colorado (the “**Records**”) on January 6, 2016 at Reception No. 2016000001263 (the “**Agreement**”), in connection with the platting and development of certain real property legally described on the Plat (as defined in the Agreement), which was recorded in the Records on January 6, 2016 at Reception No. 2016000001264 (the “**Property**”); capitalized terms used but not defined in this First Amendment have the meanings given them in the Agreement.

B. The Agreement addresses, among other matters, the timing of trail construction required by the City in connection with the development of the Property, the dedication of the Lutz Parcel to the City for open space purposes and fee-in-lieu of water dedication requirements.

C. As stated in Section 5 of Exhibit G of the Agreement, the Parties acknowledge that on or about December 5, 2005, the City of Brighton, the City of Brighton Water, Sewer and Drainage Enterprise, THF Prairie Center Development L.L.C, the THF PRAIRIE CENTER RETAIL ONE, L.L.C., and Prairie Center Metropolitan District No. 1 and No. 2 entered into a COMPREHENSIVE FUNDING PLAN, MASTER DEVELOPMENT AGREEMENT, PRE-ANNEXATION AGREEMENT, AND INTERGOVERNMENTAL AGREEMENT FOR PRAIRIE CENTER, BRIGHTON, COLORADO (as amended, the “**Comprehensive Agreement**”), and the Parties acknowledge the Property is included within the property subject to the Comprehensive Agreement. Furthermore, Prairie Center Metropolitan District Nos. 1 and Number 2 assigned all of their respective right, title and interest in the Comprehensive Agreement to the District.

D. Pursuant to Section 5 of Exhibit G to the Agreement, the trail Public Improvements are to be designed, completed and accepted by the City in two phases, with Phase 2 of the trail Public Improvements to be completed (as evidenced by the City’s grant of construction acceptance therefor) prior to the issuance of the final certificate of occupancy for the second lot of the Plat to develop.

E. Pursuant to Section 2 of Exhibit D to the Agreement, the commencement of the process to dedicate the Lutz Parcel to the City was to occur (and such commencement did occur) within 120 days of the City’s approval of the Plat; however, as of the Effective Date, the Lutz Parcel has not been conveyed to the City; Developer and the City desire to cooperate in good faith to finalize terms for dedication of the “Lutz Parcel” (defined in Section 4) as contemplated by the Agreement.

F. Pursuant to Section 8 of Exhibit G to the Agreement, at the sole discretion of the applicable Applicant, such Applicant may convey to the City specifically designated acceptable water shares or other form of water rights that meet the City’s established standards and criteria as set forth in the Code (“**Acceptable Water Rights**”) in lieu of paying the “without water rights” Water System Improvement Fee component of the Water Plant Investment Fees and the “without water rights” Water Resource Fee component of the Water Plan Investment Fee.

G. The City, the District and Developer (each a “**Party**” and collectively the “**Parties**”) now desire to amend the timing and phasing for Developer’s dedication of the trail Public Improvements, to amend the timing for dedication of the Lutz Parcel and to specify water dedication requirements as to certain development applications, all as set forth herein.

Amendment

NOW, THEREFORE, in consideration of the mutual agreements and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into and made substantive terms of this First Amendment.

2. Prairie Center Open Space. Section 5 of Exhibit G to the Agreement is hereby deleted in its entirety and in its place inserted the following:

5. Trail Design, Construction, and Maintenance. Developer or the District shall construct, or cause to be constructed, within Tract C, the trail Public Improvements set forth in **Exhibit B**. The final design of Phase 1 of the trail Public Improvements within Tract C have been completed and accepted by the City with the Site Plan. The final design of each section of Phase 2 of the trail Public Improvements within Tract C shall be provided to the City for review and approval contemporaneously with final Site Plan review and approval for Lot 3 (also known as Watermark) of the Plat (or, if Lot 3 of the Plat has been subdivided prior to the final design of such trail Public Improvements, contemporaneously with final site plan review and approval for the last of such subdivided lots to be developed). Phase 1 of the trail Public Improvements has been completed. Each section of Phase 2 of the trail Public Improvements shall be completed (as evidenced by the City’s grant of construction acceptance therefor) prior to the issuance of the fiftieth (50th) certificate of occupancy for Lot 3 of the Plat (or, if Lot 3 of the Plat has been subdivided prior to completion of such trail Public Improvements, prior to the issuance of the final certificate of occupancy for the last of such subdivided lots to

be developed). The maintenance, repair and replacement of the trail Public Improvements shall be the City's responsibility; however, the District shall repair any damage caused by use by any oil and gas operators within the Development.

3. **Lutz Parcel.** Section 2 of Exhibit D to the Agreement is hereby deleted in its entirety and in its place inserted the following:

2. **Community Park Dedication.** Notwithstanding any contrary provision of the Comprehensive Agreement or the City's ordinances and regulations, the City and Developer agree that the timing of dedication of land in satisfaction of community park requirements in connection with the Development, comprising a portion of Planning Area 7d as generally depicted on the Project PUD (as defined in Section 3 of Exhibit G), is not desired at the time of residential development within Village V. In lieu of such dedication, not later than December 31, 2022, Developer shall dedicate to the City, via special warranty deed, the parcel generally depicted as Planning Area 7e on the Project PUD and known as Lutz Reservoir/Prairie Lake Regional Wildlife Sanctuary (being Parcel 0156920000032 of the Adams County, Colorado Assessors Record, the "**Lutz Parcel**"); provided however, it shall be a condition precedent to Developer's obligation to dedicate, and the City's obligation to accept such dedication of the Lutz Parcel that the parties have mutually agreed upon an ALTA/ACSM Land Title Survey of the Lutz Parcel and that certain adjacent property known as the Lutz Reservoir (being Parcel 0156920000018 of the Adams County, Colorado, Assessors Records, the "**Lutz Reservoir**"), a preliminary commitment for title insurance for the Lutz Parcel and a proposed form of special warranty deed for the Lutz Parcel. Developer and the City shall cooperate in good faith to satisfy such conditions precedent and thereafter finalize and consummate the dedication of the Lutz Parcel as contemplated by this Section 2. At the time of conveyance of the Lutz Parcel to the City, Developer shall cause the issuance of a title policy to the City for the Lutz Parcel insuring fee title in the Lutz Parcel in the City.

4. **Lutz Reservoir.** As set forth in the Comprehensive Agreement, the City shall have completed its rate study and established fees for non-potable water, and such is contemplated to be complete within the next six months. As more particularly described in Section 3.6 of the Comprehensive Agreement, the "Non-Potable Water Distribution System" (as defined in the Comprehensive Agreement) is contemplated to be constructed, operated and maintained within the Project to the extent the "Developers" (as defined in the Comprehensive Agreement) and the District determine the City's fees for potable water service are such that development of the Non-Potable Water Distribution System is economically viable. The Parties acknowledge the Lutz Reservoir is key to the Non-Potable Water Distribution System. As an effort to further the conveyance of the Lutz Reservoir to the City for a City regional non-potable water system, the City and the Developer shall cooperate in good faith to finalize a mutually agreed upon stormwater alignment to remove stormwater from the Lutz Reservoir, as such alignment is generally contemplated as depicted in Exhibit A attached hereto and incorporated herein by this reference (the "**Stormwater Alignment**"), which will be finalized by March 31, 2022. In pertinent part, the Stormwater Alignment is contemplated to (a) remove and replace (relocate) a portion of the

existing concrete trail within the Lutz Parcel to facilitate the siting of a detention pond therein; and (b) connect such detention pond to “Pond 2” (as depicted on Exhibit A) to provide for release of stormwater to Pond 2 utilizing existing and proposed stormwater pipes. Not later than six months after the City’s and Developer’s agreement on the final Stormwater Alignment, the Developer shall be responsible for and shall complete the design for the construction of the final Stormwater Alignment (the “**Stormwater Alignment Improvements**”). Promptly after the City’s approval of the design for the construction of the final Stormwater Alignment, (i) subject to obtaining all necessary City and other governmental approvals and permits (provided the water quality pond related work will be done as a part of the maintenance of such pond), the Developer or the District shall commence construction of the Stormwater Alignment Improvements and diligently pursue completion of the Stormwater Alignment Improvements; and (ii) the Parties shall cooperate in good faith to negotiate and finalize an agreement providing for the conveyance of the Lutz Reservoir and the other existing constituent components of the Non-Potable Water Distribution System by December 31, 2022. For the avoidance of doubt, no provision of this Section 4 shall amend, or be deemed to amend, the Comprehensive Agreement.

5. **Water Dedication.** The City and the Developer acknowledge that, as of the Effective Date, the following two site plan development applications have been submitted with respect to the Development and are being processed by the City (each, a “**Development Application**”):

(i) Lot 3. A Development Application has been submitted for Lot 3 of the Plat, known as the “Watermark” development (“**Watermark Application**”). As of the Effective Date, the Applicant with respect to the Watermark Application has elected to dedicate Approved Water Rights to the City in lieu of paying the applicable “without water rights” Water System Improvement Fee component of the Water Plant Investment Fees and the “without water rights” Water Resource Fee component of the Water Plan Investment Fee. The City acknowledges and agrees that dedication of 37.65 acre-feet of PIMC water rights shall fully satisfy all water dedication requirements with respect to the Watermark Application (If the unit count changes, such water rights dedication shall be modified as needed from what is shown in the most recent submittal of the Watermark Application as of the Effective Date.) If the Watermark Application is withdrawn by the Applicant thereof or if the City formally denies the Watermark Application, this Section 5(i) shall terminate and be of no further force or effect.

(ii) Lot 4. A Development Application has been submitted for Lot 4 of the Plat, known as the “Prosper” development (“**Prosper Application**”). As of the Effective Date, the Applicant with respect to the Prosper Application has elected to dedicate Approved Water Rights to the City in lieu of paying the applicable “without water rights” Water System Improvement Fee component of the Water Plant Investment Fees and the “without water rights” Water Resource Fee component of the Water Plan Investment Fee. Subject to the terms of this Section 5(ii), the City acknowledges the dedication of 17.80 acre-feet of Acceptable Water Rights (the “**Prosper Dedication**”), which may satisfy the water dedication requirements with respect to the Prosper Application, as more particularly described in Exhibit C attached hereto and incorporated herein by this reference (the “**Prosper Water Calculation**”). The Parties agree this dedication applies to the planned seventy-seven (77) lot single family detached development, and new water rates (Water Dedication or Water Resource Fee) shall apply only to additional units and/or irrigated acreage, if any, added to the Prosper Application after the Effective Date, as such rates are in effect

at the time of final plat. If the Prosper Application is withdrawn by the Applicant thereof or if the City formally denies the Prosper Application, this Section 5(ii) shall terminate and be of no further force or effect.

6. Effect of Amendment. Except as expressly modified herein, the Agreement has not been amended and the parties hereto hereby ratify and confirm the Agreement as being in full force and effect in accordance with its terms. If there is any inconsistency between the terms of the Agreement and the terms of this First Amendment, the provisions of this First Amendment shall govern and control the rights and obligations of the parties.

[signature pages follow]

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the Effective Date.

CITY:

CITY OF BRIGHTON, COLORADO, a home rule municipal corporation

By: _____

Name: Gregory Mills

Title: Mayor

ATTEST:

APPROVED AS TO FORM:

_____, City Clerk

_____, City Attorney

DEVELOPER:

THF PRAIRIE CENTER DEVELOPMENT, L.L.C.,
a Colorado limited liability company

By: THF Prairie Center Investors, L.L.C., a
Missouri limited liability company,
its Manager

By: Milan Green Management, L.L.C.,
a Missouri limited liability company,
its Manager

By: _____
Robert J. Jakubeck, Manager

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by Robert J. Jakubeck, as Manager of Milan Green Management, L.L.C., a Missouri limited
liability company, as Manager of THF Prairie Center Investors, L.L.C., a Missouri limited liability
company, as Manager of THF PRAIRIE CENTER DEVELOPMENT, L.L.C., a Colorado limited
liability company.

Witness my hand and official seal.

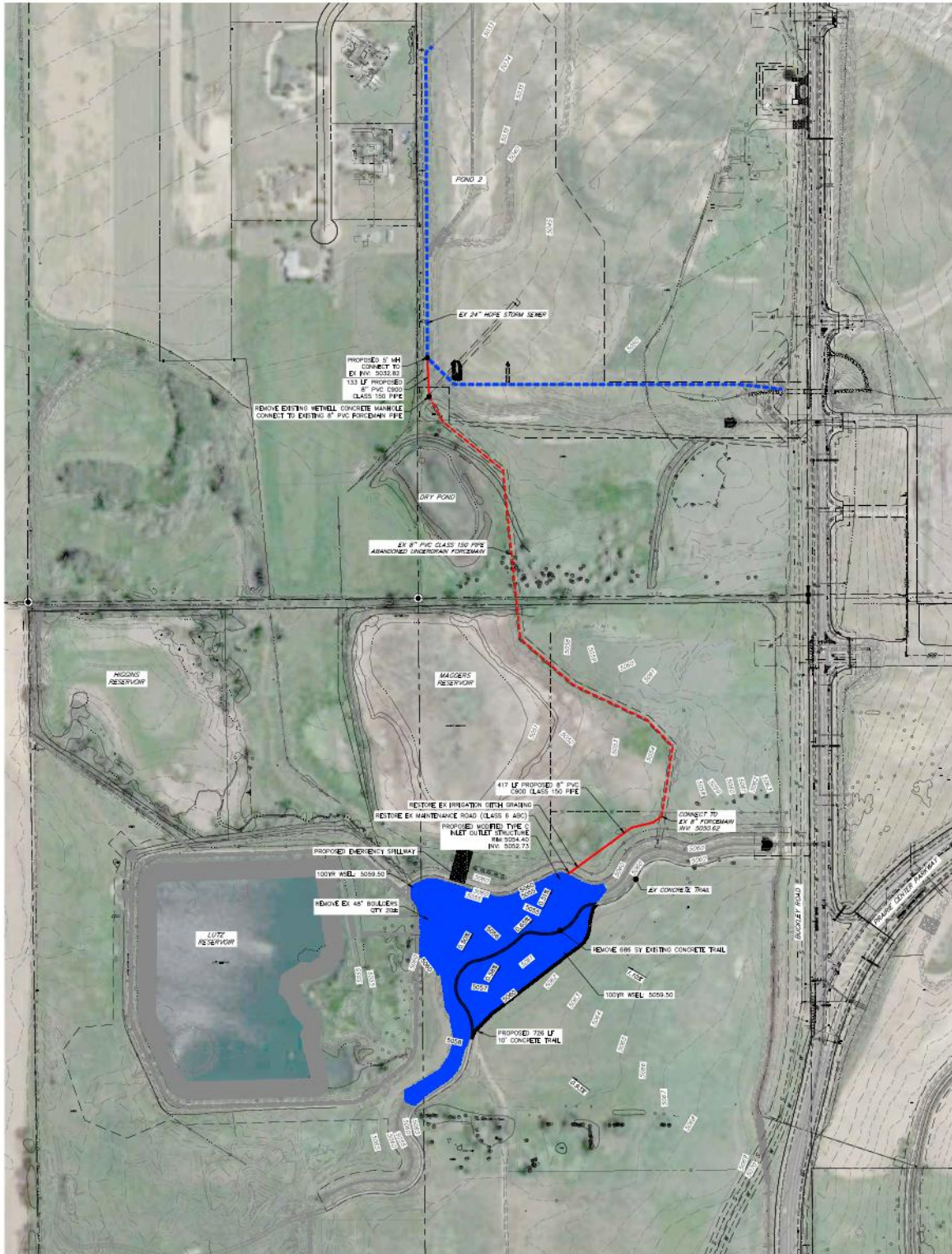
Notary Public

My commission expires: _____

EXHIBIT A
Stormwater Alignment

[follows this page]

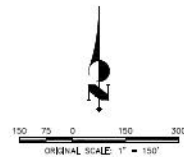
PRAIRIE CENTER METROPOLITAN DISTRICT DRAINAGE ALTERNATIVE - 8 INCH OUTLET



WQ POND EFFECTS ON DOWNSTREAM PONDS SWMM COMPARISONS

WQ Pond with 8-inch outlet pipe	
Watershed Area =	195.1 acres
Watershed Imperviousness =	10%
Maximum Volume =	18.31 acre-ft
Time to drain =	60 hours
Unadjusted CUF =	13,066 cu. yd
Unadjusted FFI =	8,705 cu. yd
Net (CUF) =	4,361 cu. yd

	Project 15000.19		Alternative W/ 8 inch outlet		DIFFERENCE	
	Volume (acre-ft)	Maximum Release Rate (cfs)	Volume (acre-ft)	Maximum Release Rate (cfs)	Volume (acre-ft)	Maximum Depth (ft)
Pond 2	42.93	75.80	7.62	43.34	75.92	7.64
Pond 3	31.24	70.79	8.03	31.30	70.75	8.41



PRAIRIE CENTER METROPOLITAN DISTRICT
DRAINAGE ALTERNATIVE
JOB NO. 15000.10
11/23/2021
SHEET 1 OF 1



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P.O. Box 97-01-988 • info@jr-engineering.com

EXHIBIT B
Prosper Water Calculation

[follows this page]



06/29/2021

City of Brighton
C/O Planning & Zoning Department
500 S 4th Avenue,
Brighton, CO 80601

RE: Inspirada at Prairie Center – Subdivision Plan, Final/Signature Submittal, Water Dedication Packet

To the Brighton Planning Department,

Item 14 on the Subdivision Plan Checklist document for the city of Brighton calls for the completion of a "Water Dedication Packet" that includes a questionnaire regarding the historic use of water rights proposed for dedication and an affidavit of historical use of water rights. Since our initial submittal Prosper has executed a contract for 10 shares of Fulton Irrigating Ditch Company water that are part of a larger share transaction. These 10 shares will yield a credit of 1.84 acre-feet per share based on the attached share acceptance letter dated 11/04/2019 from Dawn Hessheimer with the City of Brighton which would bring to total value of the 10 shares to 18.4 acre-feet of water credit with the City of Brighton. Prosper has previously reached out to the Brighton Water Resource Department regarding a water estimate for the development which was confirmed via email from Dawn Hessheimer dated 05/28/2021 that the preliminary water requirement calculation for the Inspirada subdivision is currently estimated at 17.80 acre-feet.

Before closing on the contracted Fulton Shares, Prosper will review the status of the shares again with the Brighton Water Resource Department to ensure that they will meet the city's requirements for use at the anticipated acre-foot value. Prosper hereby acknowledges that a final plat for the Inspirada at Prairie Center project cannot be approved without dedicating the required amount of city approved water for the development.

Shane Rugg
Director of Land
Prosper Land and Development, LLC.

Page 1 of 1

Worksheet for Estimating Depletions Associated with the
 Portion of the (Prairie Center - Lot 4) which is to be
 Annexed to the City of Brighton and Which is Located on the
 South Platte Side and Beebe Draw Side
 of the South Platte/Beebe Draw Drainage Divide

Table 1

CATEGORY	HOUSING UNITS PER ACRE	NUMBER OF ACRES	AVERAGE CONSUMPTIVE USE FACTOR PER ACRE	Estimated Average Depletions AcFt/Year
Residential	2	_____	x 1.31	= _____
	3	_____	x 1.34	= _____
Round to Nearest	4	_____	x 1.35	= _____
Whole Number:	5	_____	x 1.37	= _____
9.92 Total Acres	6	_____	x 1.41	= _____
- 2.08 Open Space	7	_____	x 1.42	= _____
7.84 Residential	8	_____	x 1.44	= _____
78 Units / 8.18	9	_____	x 1.47	= _____
Residential Acres =	10	7.84 Acres	x 1.48	= 11.60
9.95 DU/Acre	11	_____	x 1.51	= _____
Round to 10 DU/Acre	12	_____	x 1.53	= _____
Apartments		_____	x 1.56	= _____
Schools		_____	x 1.21	= _____
Parks (Open Space - Common)		2.08 Acres	x 2.20	= 4.58
Commercial		_____	x .30	= _____
Industrial Type 1		_____	x .10	= _____
Type 2		_____	x 1.00	= _____
Type 3		_____	x 2.00	= _____
Other		_____	x T.B.D.	= _____
Estimated Project Depletions				16.18
10% Surcharge, If Appropriate				+ 1.618
Total Acre Feet Required				= 17.80 Acre/Feet

C:\water\deplTB1

