

**AGREEMENT REGARDING MEDICAL CENTER DRIVE IMPROVEMENTS
THF PARCELS**

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 2019, by and between the CITY OF BRIGHTON, a home rule municipal corporation in the Counties of Adams and Weld, State of Colorado ("City"), and THF Prairie Center Development, LLC ("THF"), who together are the "Parties" hereto.

RECITALS

WHEREAS, THF owns certain parcels along Medical Center Drive corresponding to the following Adams County parcel numbers: 0156915101023, 0156915101022, 0156915101006, 0156915401006, 0156915401005, 0156915301009, 0156915301008, 0156915301016, 0156915301020, 0156915301019, 0156915301020 ("THF Parcels"); and

WHEREAS, pursuant to the Bromley Park Filing 203 Development Agreement, recorded at Reception No. C1023071 ("Development Agreement"), improvements for Medical Center Drive would not be required until development of the adjacent parcels occurred; and

WHEREAS, the majority of the Medical Center Drive improvements adjacent to the THF Parcels have already been completed by THF or its predecessor in interest; and

WHEREAS, the Parties now desire to work cooperatively to complete the final lift of roadway surface on that portion of Medical Center Drive adjacent to the THF Parcels and between parcel numbers 0156915301020 and 0156915101023 (the "Project") earlier than what would be required by the Development Agreement; and

WHEREAS, the engineer's estimated cost for the Project is approximately \$441,000.00; and

WHEREAS, it is in the best interests of the City and THF that this work be completed before any further material deterioration of this portion of Medical Center Drive occurs, and to otherwise improve and enhance this public street for the use and enjoyment of the citizens of Brighton and the public generally.

NOW, THEREFORE, for and in consideration of the Premises and the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and THF hereby mutually covenant and agree as follows:

COVENANTS AND AGREEMENTS

1. The Parties intend to provide for the final lift of asphalt on that portion of Medical Center Drive adjacent to the THF Parcels and between parcel numbers 0156915301020 and 0156915101023, more fully described in the Scope of Work in **Exhibit A**, attached hereto and incorporated herein by this reference.

1.1 The City shall be responsible for the following obligations in connection with the Project:

(a) The City shall contract for and manage the design and construction of the Project. All contracts pertaining to the Project, and approvals thereof, shall conform with Colorado law and Brighton Municipal Code requirements for public contracts.

(b) The City shall designate a person (Project Manager) responsible for the day-to-day management of the Project.

(c) The City shall inform THF in a timely manner of Project schedules, and provide updates within a reasonable timeframe upon THF's request made to the Project Manager.

(d) The City shall make all documents related to design schedule and cost for the Project available for review by THF at THF's request.

(e) Upon reimbursement to the City as set forth herein, the City shall release THF and its successors and assigns of any future obligations related to the Project. Any future improvements to the Project area, as those improvements may be triggered by specific uses on THF-owned properties, are not part of this Agreement.

1.2 THF shall be responsible for the following obligations in connection with the Project:

(a) THF shall designate an individual responsible for representing THF in coordinating the City's Project Manager (the "THF Designated Representative").

(b) Within thirty (30) days following the City's acceptance of all Project work by the City's contractor for the work described in the Scope of Work attached hereto as **Exhibit A**, the City shall send an invoice to THF at the address provide below for payment of costs incurred by the City for the completion of the Project. THF shall pay to the City the invoiced amount within 30 days of receipt of the invoice.

2. Miscellaneous.

2.1 Laws and Ordinances. The Parties shall at all times obey all applicable Federal and State laws and the Brighton City Code.

2.2 Liabilities. To the extent authorized by law, each party shall be responsible for the acts, errors, and omissions of their respective employees and agents.

2.3 No Modification. This Agreement may be modified, amended, or changed in whole or in part only by an agreement in writing duly authorized and executed by both Parties with the same formality as this Agreement.

2.4 Remedies For Default. If either Party is in default with respect to any material condition expressed herein, the non-defaulting Party may elect to treat this Agreement as terminated and may seek to recover damages limited to breach of contract only, provided that prior to such termination the non-defaulting Party shall give the defaulting Party written notice of such claim of default and the defaulting Party shall have thirty (30) days thereafter in which to cure such breach or default.

2.5 Termination for Non-Appropriation. Notwithstanding any other provision herein to the contrary, every obligation of the City that involves the expenditure of any resources in a future fiscal year shall be subject to the lawful appropriation of sufficient funds therefore by the Brighton City Council.

2.6 Notice. All notices or demands desired or required under this Agreement shall be deemed given: 1) when personally delivered; or, 2) after the lapse of five (5) days after mailing by registered or certified mail, postage pre-paid; or, 3) when sent by confirmed facsimile and followed by regular mail, postage pre-paid, and addressed as follows:

To City: City of Brighton
 Department of Infrastructure
 500 S 4th Ave
 Brighton, CO 80601

With a copy to: City of Brighton
 City Manager
 500 S 4th Ave
 Brighton, CO 80601

To THF:

or to such other address as each Party may designate by written notice given in accordance with this paragraph 2.6.

2.7 No Joint Venture or Partnership. Nothing herein shall be interpreted or construed as creating a joint venture or partnership between the Parties. Neither of the Parties shall have the right under this Agreement to create any obligation or incur any debt on behalf of the City or THF.

2.8 No Third Party Benefits Intended. It is expressly understood and agreed that the enforcement of all terms and conditions of this Agreement and all rights and actions relating thereto shall be strictly reserved to the City and THF, and nothing herein shall give or allow any claim or right of action to or by any other or third person to this Agreement. It is the intention of the City and THF that any person other than the City and THF receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

2.9 Paragraph Headings and Grammatical Rules. The paragraph headings herein are for convenience only and are not intended to govern, limit, or aid in the interpretation of this Agreement. In the interpretation of this Agreement, any gender includes the other; the singular number includes the plural and vice versa; words used in the present tense include the past and future tense and vice versa, unless manifestly inapplicable; and words shall be construed according to context and the normal use of language.

2.10 Integration. This Agreement consists solely of the terms and conditions stated herein, which are intended as a complete integration of all understandings between the Parties concerning the subject matter hereof. No prior or contemporaneous addition or deletion or other document or amendment hereto shall have any force or effect whatsoever unless stated herein or expressly referenced and incorporated herein. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved by both parties.

2.11 Binding Agreement. This Agreement and all terms and conditions herein shall extend to and be binding upon the Parties and their respective heirs, successors, and assigns, provided that this Agreement and the rights and duties contained herein may not be assigned or transferred, by operation of law or otherwise, without the prior written consent of both Parties.

2.12 Joint Drafting. This Agreement is the product and result of the joint efforts of the Parties hereto, each of whom had the advice of legal counsel and an equal opportunity to contribute to its content.

2.13 Non-Waiver. Waiver of the enforcement of any breach of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by that Party of the same or any other provision of this Agreement.

2.14 Applicable Law and Venue. This Agreement is made and shall be construed in accordance with the laws of the State of Colorado. The Parties stipulate that

the proper venue for any court action that might occur in connection with or as a result of this Agreement is Adams County, Colorado.

2.15 No Costs or Fees. In the event of litigation, arbitration, or other dispute resolution process arising out of this Agreement, the Parties agree that each Party shall pay its own costs and expenses, including attorneys' fees.

2.16 Counterparts of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and both or all of which together shall constitute one and the same instrument.

2.17 Power to Contract. Each Party warrants that it has the power to enter into this Agreement and that its signatory is authorized to bind it hereto.

WHEREFORE, the PARTIES affix their signatures as of the above-written date.

ATTEST:

CITY OF BRIGHTON, COLORADO

Natalie Hoel, City Clerk

Marvin Falconburg, Acting City Manager

APPROVED AS TO FORM:

Jack D. Bajorek, City Attorney

ATTEST:

THE PRAIRIE CENTER DEVELOPMENT, LLC

Notary Public

By:

APPROVED AS TO FORM:

By: _____

EXHIBIT A

SCOPE OF WORK

Medical Center Drive – Final Improvements

The Contractor, being familiar with all of the requirements of this Contract, shall furnish all labor, material, tools, supplies, equipment, transportation, services and all other things necessary for the completion of the Project in accordance with the requirements and intent of the Contract Documents within the time of completion as set forth herein,.

This project consists of completing an existing roadway including pavement markings, milling, patching, striping, public information, and all other work associated to complete the project, where any items not identified are considered inherent to the work.

The scope of work for the Medical Center Drive Improvements will consist of performing the contracted work in accordance with the contract documents for the areas shown on the map attachment. The project shall include:

- Milling approximately 1 to 4 inches
- Patching at the designated depths, which will include milling to only partially remove the asphalt
- Subgrade preparation of small areas as designated by the project manager/inspector
- Asphalt patching of small areas as designated by the project manager/inspector
- Striping and pavement markings
- Mobilization
- Public Information
- Traffic Control
- Material Testing and Reporting

The Contractor shall obtain all permits required to perform the work prior to the start of construction.

The project shall be completed in 30 Consecutive Calendar Days after Notice to proceed.

SPECIAL PROVISIONS

The following project special provisions shall apply and where there is a discrepancy between the City of Brighton's Standards and Specifications, the more stringent shall apply.

A. Project Management

- a. The Contractor shall provide a Critical Path Method (CPM) schedule using Microsoft Project with a baseline schedule prior to the Notice to Proceed and monthly thereafter, updated to reflect actual schedule at the pay estimate monthly end.
- b. The Contractor shall maintain meeting minutes of all meetings and submit for review to the COB prior to formalizing the document as a project record.

B. Material Testing & Reporting

- a. All material testing shall be completed in accordance with the COB Standards and Specifications, CDOT Field Materials Manual and the Colorado Department of Transportation Standards and Specifications for Road and Bridge Construction
- b. Contractor shall be responsible for quality control and any quality assurance requested by the City of Brighton representatives.
- c. In the event the COB contracts with an independent testing firm to verify compliance with the material specifications, the Contractor shall pay the initial costs of the testing. If the material is found to be in compliance with the specifications, the COB shall bear the costs of the testing. If the materials is found NOT within the specifications, the Contractor shall bear the costs of the testing and associated contract costs for testing. The materials shall also be removed and then replaced in accordance with the COB Standards and Specifications and the contract requirements.
- d. Any materials that cannot be properly removed or may cause further damages, as interpreted by the COB, will not be paid for.
- e. Any materials delivered or shipped where samples of the material are found not to be in specification will be rejected.
- f. All materials are subject to review by the COB and shall first be accepted prior to use.

C. Permitting

- a. The Contractor shall bear all costs of permitting and will be considered inherent to the work. The COB will issue a no cost Right-of-Way (ROW) permit.

D. Public Information

- a. Public information shall consist of several components required by the Contractor.
 - i. Provide a 72 hour notification via door hangers with front English and back Spanish, where door hangers are to be submitted and reviewed by the COB prior to use. Door hangers shall be placed on front doors or main entries of all properties adjacent to the project. Door hangers shall consist of the following information:
 - 1. Construction will begin in approximately 48 hours and the homeowner will be responsible for removing their vehicle from the street until the No Parking signs are removed by the Contractor.
 - 2. All vehicles removed will be towed at the owner's expense.
 - 3. The Contractor's, or Public Information hotline phone number if PI is specified.
 - 4. Weather disclaimer.
 - ii. Dedicated project hotline available 24 hours a day and 7 days a week with on-call Contractor representative for emergencies where emergencies are determined by the Project Engineer.
 - iii. Provide door hangers 7 days in advance for any construction activities that are considered major, impacting property owners for more than 10 consecutive days of construction. Short duration construction activities, as determined by the City Project Engineer, do not require this special door hanger.
 - iv. A custom sign shall be fabricated for the project located at the beginning and end of the work zone stating the project name, duration of construction, and the hotline

phone number. The information on the sign shall be accepted by the COB prior to fabrication and usage.

- v. All public information notifications shall only be delivered between the hours of 8:00 AM and 5:00 PM, or as approved the COB.
- vi. In the event that weather, project delays, rescheduling, or any other delay, the Contractor shall again notify the properties with door hangers and revise any further Public Information to reflect the revised dates and associated information.
- vii. Variable message boards shall be used in conjunction with signage notifying the public of construction, along with pertinent information to the project.
- viii. A call log shall be provided to the City each week showing the date, time, caller information, and description of the issue, response to the issue, date of action, unresolved matters, and any other information deemed pertinent by the Project Engineer.
- ix. City of Brighton fliers will be furnished for work areas where other notifications may not be provided are typically information in nature. These will be paid for under Public Information – Fliers (EA).
- x. For minor work, the affected streets shall receive fliers only, unless otherwise directed by the City, which may include extended areas.

E. Mobilization

- a. Payment for mobilization will be paid in the following increments, based on dollars: 10% upon completion of 10% of the contracted work, 25% additional upon 25% completion of the work, 50% additional upon 50% completion of contracted work, and the final balance upon 75% of completion of the work. The Project Engineer shall have discretion to the amount of mobilization completed related to the progress of work.

F. Project Submittals

- a. All project submittals shall be submitted at least 10 days in advance, allowing for review time by the COB. Submittals not provided in advance will not stop the time count and the contractor is subject to the time count draw down during review times.
- b. Submittals required:
 - i. All submittals required by the COB Standards and Specifications.
 - ii. Traffic Control Plans
 - iii. Materials
 - iv. Certificates of Compliance (COCs) and Certified Test Reports (CTRs)
 - v. Payment Applications
 - vi. Material Testing Reports
 - vii. Initial project schedule, baseline project schedule, monthly updated project schedule.
 - viii. Subcontractor list with salient features of subcontract.
 - ix. Reports of material usage
 - x. Material Tickets
 - xi. Public Information documents
 - xii. Any items determined to be pertinent to the contract, verifying quantities, verification of quality, or any other documents deemed necessary as determined by the COB Engineer or Director.
 - xiii. Submittals as required by the COB Standards and Specifications.

- xiv. Any outstanding submittals not received will result in payment being withheld until all submittals have been received.

G. Traffic Control

- a. All traffic control shall comply with the Manual on Uniform Traffic Control Devices (MUTCD), the COB Standards and Specifications, and all requirements of the Public Information special provision.
- b. A traffic control plan accepted by the COB will be required prior to any work commencing.
- c. The Contractor will be responsible to maintain traffic control devices and temporary markings and in no event shall pavements be left without appropriate traffic control. All temporary pavement markings are included in the Traffic Control line or considered inherent to the work if there is not a Traffic Control line item.
- d. The Contractor shall erect "No Parking" signs 24 hours before the start of construction and the signs shall display the dates of construction and times.
- e. Any cars that need to be towed will be towed by the Contractor, then submitted invoices to the City, at the expense of the City. Any vehicles to be towed shall be first approved by the City and efforts shall be to relocate the vehicle from the construction area to a non-construction area and have a note provided to the residence about the relocation of the vehicle. The City may assist in the efforts of towing vehicles.

H. Staging Area Restoration

- a. Any staging areas shall be restored fully prior to project acceptance. This may include erosion and sediment control features, stabilization, seeding, debris removal, etc.
- b. Any private property utilized, including COB property, shall obtain written permission from the property owner and provide proof of permission to the COB. The COB will not engage in third party contracts, but may withhold payment in the event of damages to private property and unauthorized use of private property.

I. Erosion and Sediment Control

- a. The Contractor may be required to obtain erosion and sediment control permits, including from the COB and/or State of Colorado. Any permits and work associated with erosion and sediment control will be considered to be inherent to the work with no additional compensation.
- b. Any materials required to be used for erosion and sediment control, shall be subject to inspection and shall comply with the Urban Drainage and Flood Control District (UDFCD) or as directed by the COB.
- c. In the event the contractor is not in compliance with erosion and sediment control specifications, all work shall cease until compliance is obtained and the Contractor may be assessed fines and/or criminal charges. The COB may issue a notification of non-compliance and/or stop work order.
- d. Erosion and sediment control shall consist of constructing, installing, maintaining, and removing when required, inspecting and reporting, Best Management Practices (BMPs) during the life of the contract and through the warranty period to prevent or minimize erosion, sedimentation, and pollution of any state waters.
- e. All erosion and sediment control work shall be conducted under the supervision of an Erosion Control Supervisor with an active certification.

- f. The Erosion Control Supervisor's responsibilities shall be the responsibilities defined in the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction *Section 208 Erosion Control*, or thereby later modified.
- g. The Contractor shall comply with the MS4 requirements.

J. Project & Material Specifications

- a. All project materials that are not specified, shall meet the City of Brighton Standards and Specifications or the Colorado Department of Transportation Standards and Specifications for Road and Bridge Construction for the specified criteria. This shall not constitute additional for pay items, as all pay items are construed to have items that are inherent to the work.

K. Liquidated Damages

- a. Liquidated damages will be assessed at \$500 per day for the first 7 consecutive days, \$1000 per day for the next 7 consecutive days, and then \$2500 for each day thereafter.

L. Force Account Work

- a. Any changes in work that unit prices and terms cannot be agreed to will be compensated in accordance with the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction section for Force Account Work (Compensation for Changes and Force Account Work).
- b. Force account work will be deducted from the Minor Contract Revisions line item contained in the Bid Tabulation.

M. Warranty

- a. The Contractor is responsible for providing a TWO-YEAR (2) Warranty for all work completed under the contract. The beginning of the warranty period will be established by the date of the Substantial Completion, reflected in the Letter of Substantial Completion issued by the COB. Any additional items such as Traffic Control, Mobilization, Public Information, or any other line items under the contract will not be paid for, but considered inherent to performing the warranty work.
- b. Warranty work will be completed in accordance with the specifications set forth in the contract, including all referenced specifications and standards including, but not limited to the MUTCD, CDOT, UDFCD, COB Standards & Specifications.
- c. Warranty work shall be completed within 30 days of notification by the COB.
- d. All Punch-List work shall be completed within 30 days of notification by the COB and final payment and advertising will not commence until all punch list work has been completed.

MATERIAL SPECIFICATIONS

- I.) ASPHALT PATCHING**
- II.) ASPHALT MILLING**
- III.) PAVEMENT MARKINGS AND STRIPING**
- IV.) MATERIAL TESTING AND REPORTING**
- V.) AGGREGATE BASE COURSE (CLASS VI) (RECYCLED CONCRETE)**

I.) ASPHALT PATCHING

MATERIALS

All asphalt materials used for patching shall be in compliance with the City of Brighton Standards and Specifications. 20% RAP may be used upon submittal and acceptance by the City. A PG 64-22 binder mix design shall be used for all mixes.

CONSTRUCTION

Milling may be required as part of patching operations and in some instances full depth patching may be required, at the sole discretion of the City and representatives of the City. The City will mark areas in advance, however, due to unknown conditions of sub-pavement, may also mark areas after or during patching operations. The contractor shall perform patching as directed by the City.

METHOD OF PAYMENT

All patching pay items will be paid for by the TN (Ton), such that material tickets will be the basis for payment. Material not used or identified as non-conforming will be deducted from the quantities supplemented by the asphalt tickets. If asphalt tickets are not provided, payment will not be made and payment may be withheld for that payment application.

Asphalt patching conducted using a milling machine will be paid for at the contract unit rate where patching depths are one (1) inch to three (3) inches in depth. Regardless if a milling machine is used for depths greater than three (3) inches, the payment will be made under asphalt patching full depth.

In the event that patching operations exceed 8' wide and 50' long, payment will be made under Asphalt Paving (TN).

II.) ASPHALT MILLING

MILLING SPECIFICATIONS

All asphalt milling shall be conducted in accordance with the Colorado Department of Transportation Standards and Specification (2017). In addition, the intent of the milling operations is to remove variations in the asphalt pavement, such that a 10' straight edge shall not show a deviation of more than 1/4" in 10'. Further, extended areas shall not exceed 1/4" of a smooth curvature or line to match the roadway profile. Areas that are identified to deviate from a smooth profile shall be corrected prior to commencing any pavement overlay or surface treatment.

CONSTRUCTION

Milling is subject to edge milling, profile milling, corrective milling, or milling as directed by the City. Milling can consist of a 2" edge mill, measured at the curb face, tapering to 1" at the center line. The contractor shall be responsible for ensuring the milling remains continuous and there are no deviations measured longitudinally or perpendicular to the roadway. Excess removal of asphalt may require a corrective leveling course which will not be paid for and considered corrective action.

All millings generated from the project shall be delivered to a City of Brighton designated site located within the City of Brighton. There may be multiple sites. In the event that the City of Brighton cannot accept the millings, it will be the responsibility of the contractor to recycle or dispose of the excess material. The City will provide locations at least two weeks prior to milling operations. For small quantities associated with patching, the contractor may, upon request from the City, use an alternate method of disposal.

METHOD OF PAYMENT

All milling will be paid for per Square Yard (SY) regardless of the method directed to use. Overlaps required for milling will not be paid for separately and only the total area milled, as measured, will be paid for. In no event shall the total payment of milling exceed plan quantity without an executed change order.

III.) PAVEMENT MARKINGS AND STRIPING

All pavement markings shall be pre-laid out with marking paint and inspected prior to final operations.

All sign placements shall be marked with a lathe and the lathe marked with the planned sign, then inspected for any adjustments or removals prior to placement.

Any adjustments or relocations due to failure to have an inspection prior to final placement will be the sole responsibility of the contractor to modify.

Any special pavement markings shall be installed in accordance with the manufacturer's specifications.

METHOD OF PAYMENT

All quantities for thermoplastic pavement markings will be paid for on a square foot (SF) basis. All quantities for sign placements will be paid for on a square foot (SF) basis, and the base for the signs will be paid for separately only if a separate line item is provided for sign post basis, which will be on an each (EA) basis.

IV.) MATERIAL TESTING AND REPORTING

All material testing, sampling, and reporting shall be conducted in accordance with the Colorado Department of Transportation Standards and Specifications, including the Field Materials Manual and associated frequencies for testing and sampling.

Contractor will be responsible for Quality Assurance and Quality Control. The contractor shall retain a third party to perform Quality Assurance testing and sampling. The contractor may perform Quality Control testing and sampling if the qualifications are in conformance with standards and specifications.

METHOD OF PAYMENT

The payment for Quality Control and Quality Assurance shall be considered inherent to the work and incidental to each pay item.

V.) AGGREGATE BASE COURSE (CLASS VI) (RECYCLED CONCRETE)

MATERIALS

Aggregate Base Course (Class VI) (Recycled Concrete) shall be in conformance with the Colorado Department of Transportation for Road and Bridge Construction. The material shall specifically be recycled concrete, crushed and screened to meet the gradation requirements. All work associated with the removal of subgrade materials, hauling, placing, storage, erosion and control logs or rock socks, are considered incidental to the pay item, unless the contractor provides an alternate pay item such as Unclassified Excavation (CY), where the removed material will then be paid for under that line item.

CONSTRUCTION

Removal of existing subgrade materials, including the associated asphalt or cover material, then replaced with Aggregate Base Course (Class VI) (Recycled Concrete), at the sole discretion of the City and representatives of the City. The City will mark areas in advance, however, due to unknown conditions of sub-pavement soils, may also mark areas after or during other construction operations. The contractor shall perform the subgrade replacement as directed by the City.

Prior to the placement of the Aggregate Base Course (Class VI) (Recycled Concrete), the contractor shall prepare 12" of the subgrade material, which includes ripping, scarifying, moisture conditioning or drying, and compaction in accordance with the Colorado Department of Transportation Standards and Specifications for Road and Bridge Construction for soil processing, where no additional payment will be made for the processing of the subsoils and shall be considered incidental to the work, unless the contract provides a pay item for Rip and Scarify.

METHOD OF PAYMENT

Aggregate Base Course (Class VI) (Recycled Concrete) will be paid for by the TN (Ton), such that material tickets will be the basis for payment. Material not used or identified as non-conforming will be deducted from the quantities supplemented by the material tickets. If material tickets are not provided, payment will not be made and payment may be withheld for that payment application.