

CONSTRUCTION, OPERATIONS, AND REIMBURSEMENT AGREEMENT

This Construction, Operations, and Reimbursement Agreement (this "Agreement") is entered into this ____ day of _____, 2024 (the "Effective Date"), between **BROOKFIELD RESIDENTIAL (COLORADO), LLC**, a Nevada limited liability company, duly authorized to do business in the State of Colorado, whose address is 6465 S. Greenwood Plaza Blvd, Suite 700, Centennial, Colorado 80111 ("Brookfield") and the **CITY OF BRIGHTON**, a Colorado home rule municipality, whose address is 500 South 4th Avenue, Brighton, Colorado 80601 (the "City"). Brookfield and the City may each be individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

A. Brookfield is the developer of land located in the City of Brighton, County of Adams, State of Colorado, commonly known as Brighton Crossings; and

B. The City is the owner of that certain 17.77-acre parcel (the "City Parcel") which is platted as Brighton Crossing Filing No. 2, Tract W located within the larger Brighton Crossings development in the City of Brighton, County of Adams, State of Colorado, commonly known as Venture Park; and

C. The City has requested and Brookfield has agreed to construct a non-potable water main and associated facilities to allow for future use of non-potable water for irrigation of Venture Park (the "Non-Potable Main") on the City Parcel for the benefit of the City as shown on **Exhibit A** attached hereto and incorporated herein by this reference, which the initial estimated cost for the Non-Potable Main, as indicated on the Opinion of Probable Costs submitted by Dewberry (the "Non-Potable Main Initial Budget"), incorporated herein as **Exhibit B**, is approximately \$313,565.00; and

D. The City recognizes the potential for cost savings by having Brookfield construct the Non-Potable Main concurrent with construction of the larger Venture Park improvements; and

E. The City agrees to reimburse Brookfield for the costs of constructing the Non-Potable Main, as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **City Approval.** Brookfield will design every element of the Non-Potable Main (the "Plans"), which will be submitted and approved by the City (each or collectively, the "City Approval") prior to the start of such construction.

2. **The Work.**

a. Brookfield shall complete the construction of each element of the applicable

work (the "Work") described on the Plans. Brookfield, at its sole discretion, may require prior to or during the applicable Work (i) City Approval of the Plans and (ii) a certification that the City has budgeted the amount of the Non-Potable Main Initial Budget. The Work shall be performed and completed in a manner determined by Brookfield in the exercise of its sole and independent judgment that meets or exceeds the Plans. Brookfield shall give the City written notice of the date of its planned commencement of the Work not more than 45 days and not less than 30 days prior to commencement of the Work for the Non-Potable Main.

b. Brookfield shall require that the selected contractor performing the Work provide a warranty and guarantee, which shall be assignable to the City, that the work it performs shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof.

c. Attached as **Exhibit B** is the Non-Potable Main Initial Budget for the Work, including costs for all Plans, observation, materials testing, survey and other soft costs (collectively "Soft Costs"), for the construction of the Work. Brookfield shall submit a revised budget for the costs, including Soft Costs, documenting the actual costs of construction for the applicable Work for approval (the "Total Cost") once the Work is completed. Such Total Cost shall include actual payment applications for review from the selected construction contractor, sub-contractors and consultants to support the costs. Brookfield and the City shall amend this Agreement to incorporate the approved Total Cost as a replacement for the applicable **Exhibit B** should the Total Cost for the Work exceed those outlined in the Non-Potable Main Initial Budget.

d. The City's approval shall be required of any changes to the Non-Potable Main Initial Budget which would increase the total costs of the Work; provided that the City shall approve emergency change orders necessary to prevent or abate imminent threats to human health or the environment.

3. City Payment for the Non-Potable Main. Not later than 30 days after the City receives from Brookfield a written notice that the applicable Work has been completed and a Total Cost has been submitted and approved by the City, the City shall pay to Brookfield the applicable Total Cost.

4. Term of Agreement. This Agreement shall terminate on that date that the City has paid the Total Cost as provided herein and Brookfield has provided as-builts or contractor redlines supporting the actual construction location of the Non-Potable Main.

5. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. Proper venue shall be in the District Court of Adams County.

6. Notices. All notices required herein shall be in writing and shall be deemed given if personally delivered or mailed with postage prepaid by United States mail to:

To Brookfield:

Brookfield Residential (Colorado), LLC
6465 S. Greenwood Plaza Blvd, Suite 700

Centennial, Colorado 80111
Attn: Sandi Thomas
E-mail: Sandi.Thomas@brookfieldpropertiesdevelopment.com

With Copy to:

Foster Graham Milstein & Calisher, LLP
Attn: Erik Carlson
360 S. Garfield St. #600
Denver, Colorado 80209
Email: ecarlson@fostergraham.com

To City:

City of Brighton Attn: City Manager
500 S 4th Avenue
Brighton, Colorado 80601

With Copy To:

City of Brighton
Attn: City Attorney's Office
500 S 4th Avenue
Brighton, Colorado 80601

Or any other such address as either party may hereinafter provide.

7. Amendment. This Agreement may not be amended or modified except by an instrument in writing duly executed by the Parties.

8. Assignment. No party shall have the right to assign its rights or obligations under this Agreement without the prior written consent of the other Parties hereto, which may be granted or withheld in the sole discretion of such Parties.

9. 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.

10. 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 Brookfield.

11. 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 Brookfield, 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 Brookfield that any person other than the City and Brookfield receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

12. Benefit and Binding Effect. This Agreement and all of the terms and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto and their successors and assigns. This Agreement may be executed by facsimile or PDF file format and/or in any number of counterparts. Each party may rely upon any facsimile, PDF file format or counterpart copy as if it were one original document.

[signature page follow]

WHEREFORE, the Parties affix their signatures as of the Effective Date.

CITY OF BRIGHTON, COLORADO

ATTEST:

Michael Martinez, City Manager

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Alicia Calderón, City Attorney

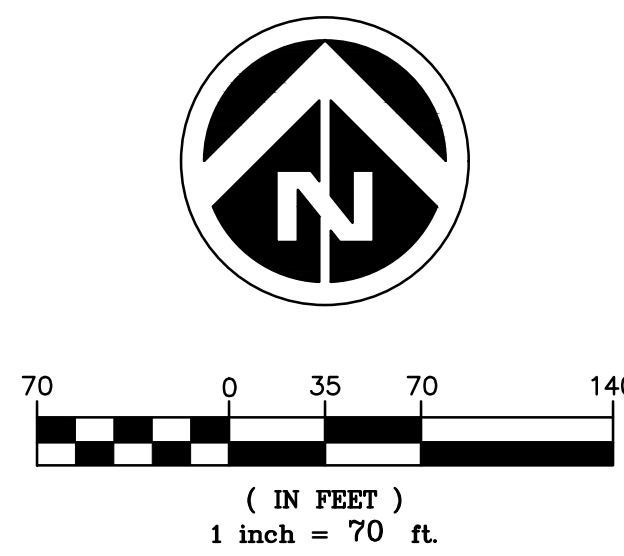
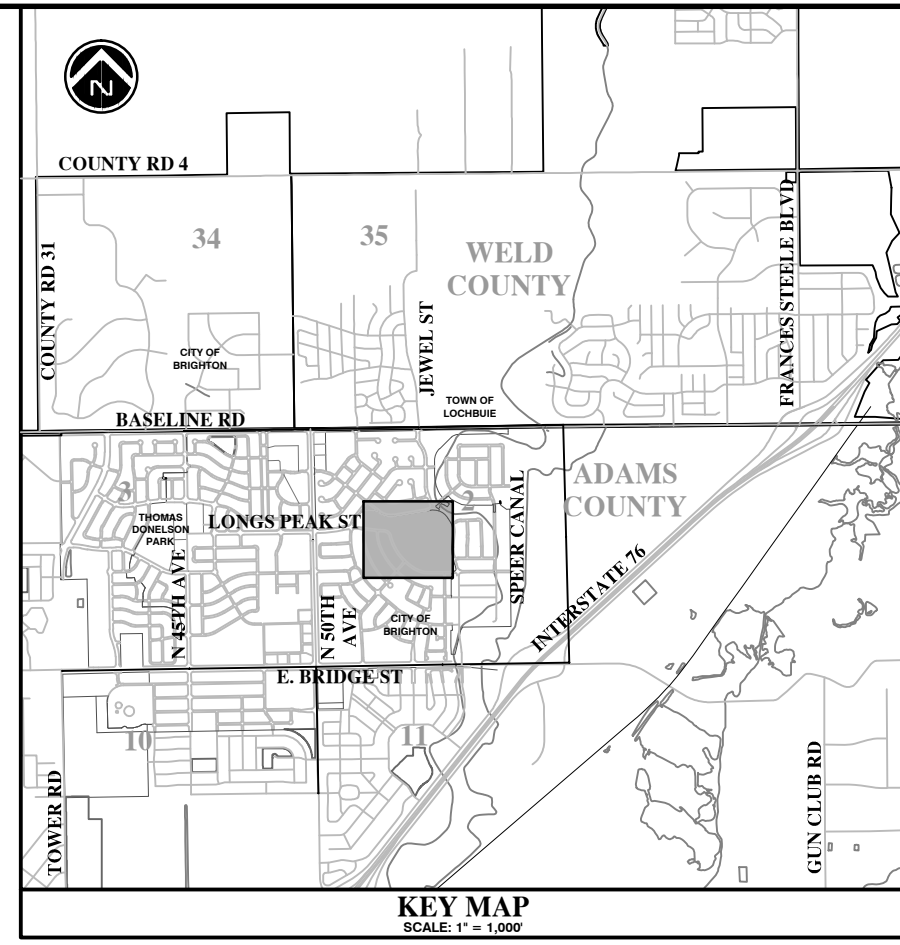
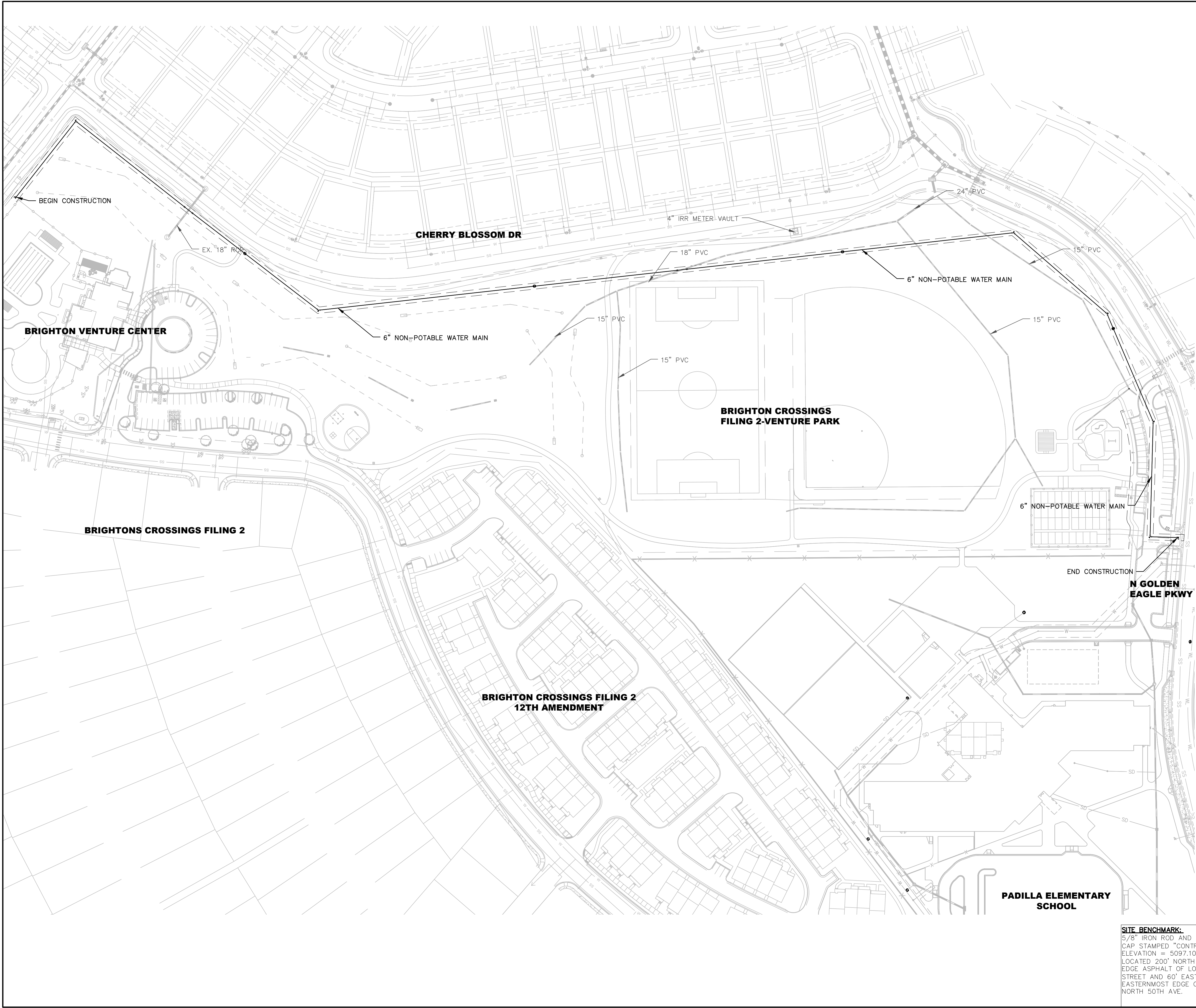
BROOKFIELD RESIDENTIAL (COLORADO), LLC,
a Nevada Corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____


Exhibit A

Y:\JOBS\152012\PLAN SETS\CONSTR\WAT\NON-POTABLE\CD-UTIL-BC-NONPOTABLE-OVL.DWG 7/27/2023 1:18 PM ROMIE CONNER




SITE BENCHMARK:
5/8" IRON ROD AND 1-1/2" ALUMINUM CAP STAMPED "CONTROL POINT" - ELEVATION = 5097.10 POINT IS LOCATED 200' NORTH OF THE NORTH EDGE ASPHALT OF LONGS PEAK STREET AND 60' EAST OF THE EASTERMOST EDGE OF ASPHALT OF NORTH 50TH AVE.

To request marking of underground facilities



Know what's below. Call before you dig.
Call 811 or visit call811.com for more information

It is the contractor's responsibility to contact UNCC a minimum of 2 days prior to the start of construction operations. Dewberry\J3 Engineers, Inc. claims no responsibility for the underground facilities depicted in this plan set.



Dewberry
Dewberry Engineers Inc.
2011 Cherry Street, Suite 206
Louisville, CO 80027
Tel: 303-975-0177
Email: sabb@dewberry.com

**NON-POTABLE WATER LINE
BRIGHTON CROSSINGS
FILING NO. 2 - VENTURE PARK
CONSTRUCTION PLANS
OVERALL UTILITY PLAN**

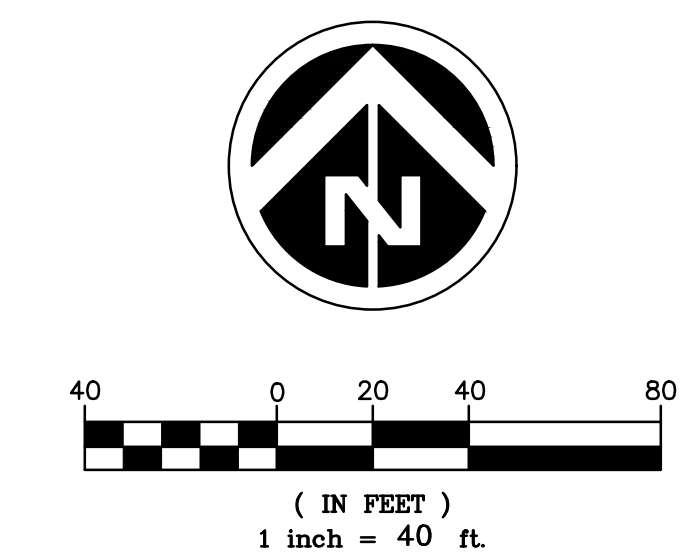
Brookfield Residential
6465 S. GREENWOOD PLAZA
SUITE 700
CENTENNIAL, CO 80111
Tel: 303-790-6593
Contact: MATT HALEY

No.	Date	Description
DOCUMENT AMENDMENTS		

**PRELIMINARY
NOT FOR
CONSTRUCTION**

Project Number: 50124419	Designed By: JWS	Drawn By: CJR	Checked By: SOS	Sheet Number: 3
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1. MINIMUM DEPTH FOR WATER LINE IS 4.5 FEET. PROPOSED DEPTH FOR NON-POTABLE WATER LINE IS 6 FEET UNLESS OTHERWISE NOTED. MINIMUM HORIZONTAL SEPARATION BETWEEN WATER AND SANITARY SEWER IS 10'. MINIMUM VERTICAL SEPARATION BETWEEN WATER AND SANITARY SEWER IS 18". MINIMUM VERTICAL SEPARATION BETWEEN WATER AND STORM SEWER IS 18" MINIMUM VERTICAL.
2. ALL STATIONS AND OFFSETS PER STREET CENTERLINE.
3. DEFLECTIONS AT ALL JOINTS SHALL NOT EXCEED 1'.
4. RESISTIVITY TESTING IS REQUIRED ON EXTENSION OF PUBLIC MAIN.
5. WATER LINE MAINS SHALL BE BLACK HDPE DR 9 UNLESS OTHERWISE NOTED. WATER LINE MATERIALS AND CONSTRUCTION SHALL BE IN CONFORMANCE WITH THE LATEST CITY OF BRIGHTON'S STANDARDS AND SPECIFICATIONS FOR THE DESIGN AND CONSTRUCTION OF PUBLIC IMPROVEMENTS.
6. SEE SANITARY AND STORM PLAN AND PROFILE SHEETS FOR WATERLINE CROSSING AND LOWERING INFORMATION.
7. ANY ADDITIONAL FOUND MANHOLES AND VALVES ON WATER LINE SHALL BE ADJUSTED TO FINAL GRADE. IT IS THE CONTRACTORS RESPONSIBILITY TO NOTIFY THE INSPECTOR AND THE ENGINEER FOR ANY ADDITIONAL MANHOLES AND VALVES UNCOVERED IN THE FILED.
8. WHEN CONNECTING TO EXISTING WATERLINE CONTRACTOR TO FIELD VERIFY LOCATION AND DEPTH BEFORE CONSTRUCTION, NOTIFY ENGINEER OF ANY DISCREPANCIES.



(SEE SHEET 5)

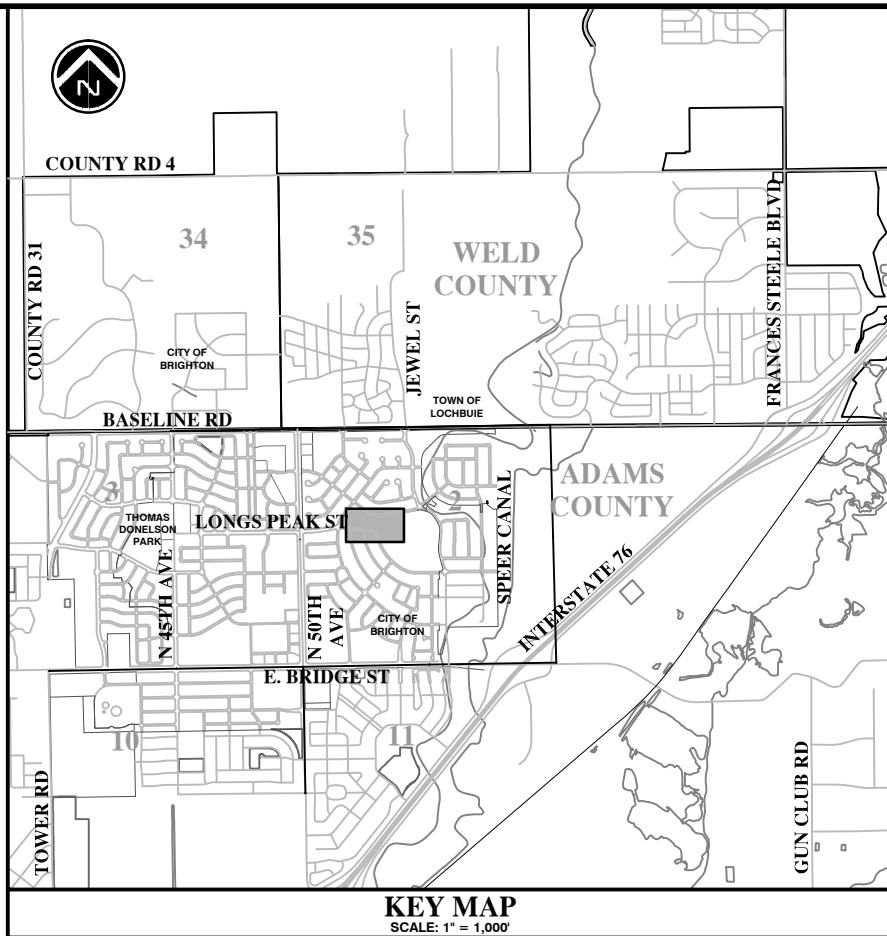
To request marking of underground facilities



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EASTERNMOST EDGE OF ASPHALT OF
NORTH 50TH AVE.



Dewberry.
Dewberry Engineers Inc.
2011 Cherry Street, Suite 206
Louisville, CO 80027
720.975.0177
Contact: Suzanne O. Sibel, PE
Email: ssibel@Dewberry.com

**NON-POTABLE WATER LINE
BRIGHTON CROSSINGS
FILING NO. 2 - VENTURE PARK
CONSTRUCTION PLANS
VENTURE PARK**

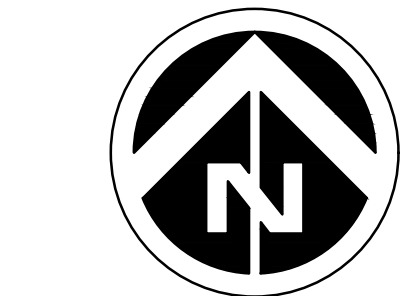
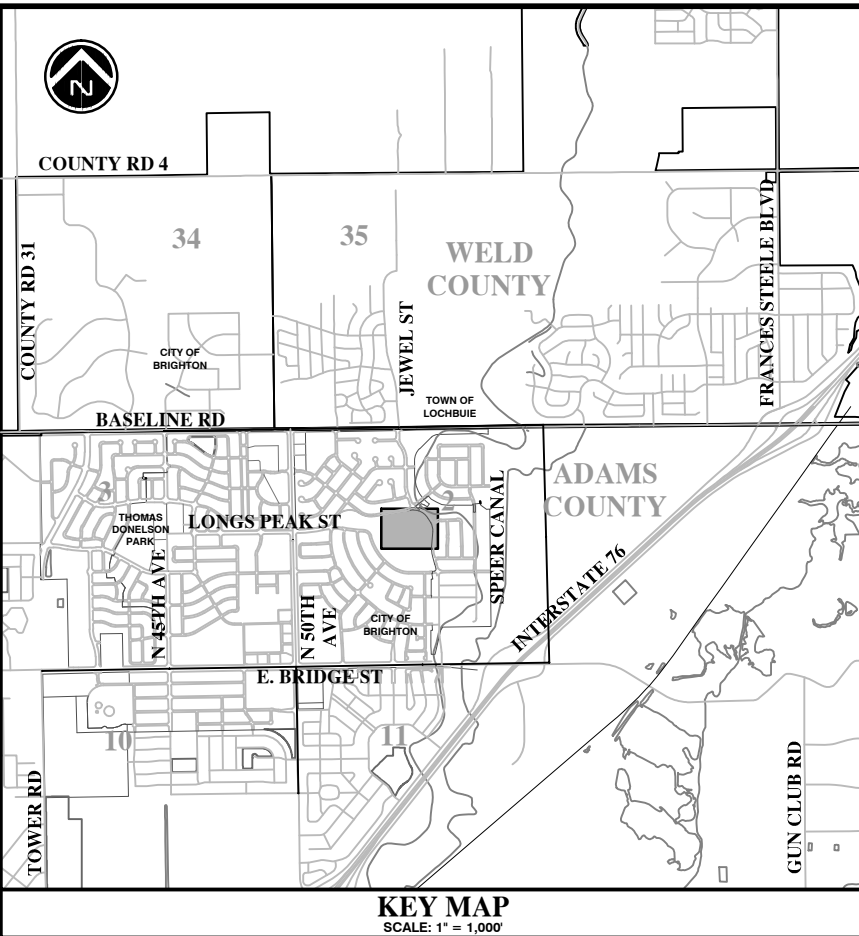
Brookfield Residential
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Tel: 303-790-6593
Contact: MATT HALEY

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Project Number: 50124419	Designed By: Drawn By: JWS CJR
Checked By: SOS	
Sheet Number: 4	

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BRIGHTON CROSSINGS
FILING NO. 2 - VENTURE PARK
CONSTRUCTION PLANS
VENTURE PARK**

Brookfield Residential
6465 S. GREENWOOD PLAZA
SUITE 700
CENTENNIAL, CO 80111
Tel: 303-790-6593
Contact: MATT HALEY

[illegible]

PRELIMINARY
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Project Number: 50124419	Designed By: Drawn By: JWS CJR
Checked By: SOS	Sheet Number: 5

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(SEE SHEET 4)

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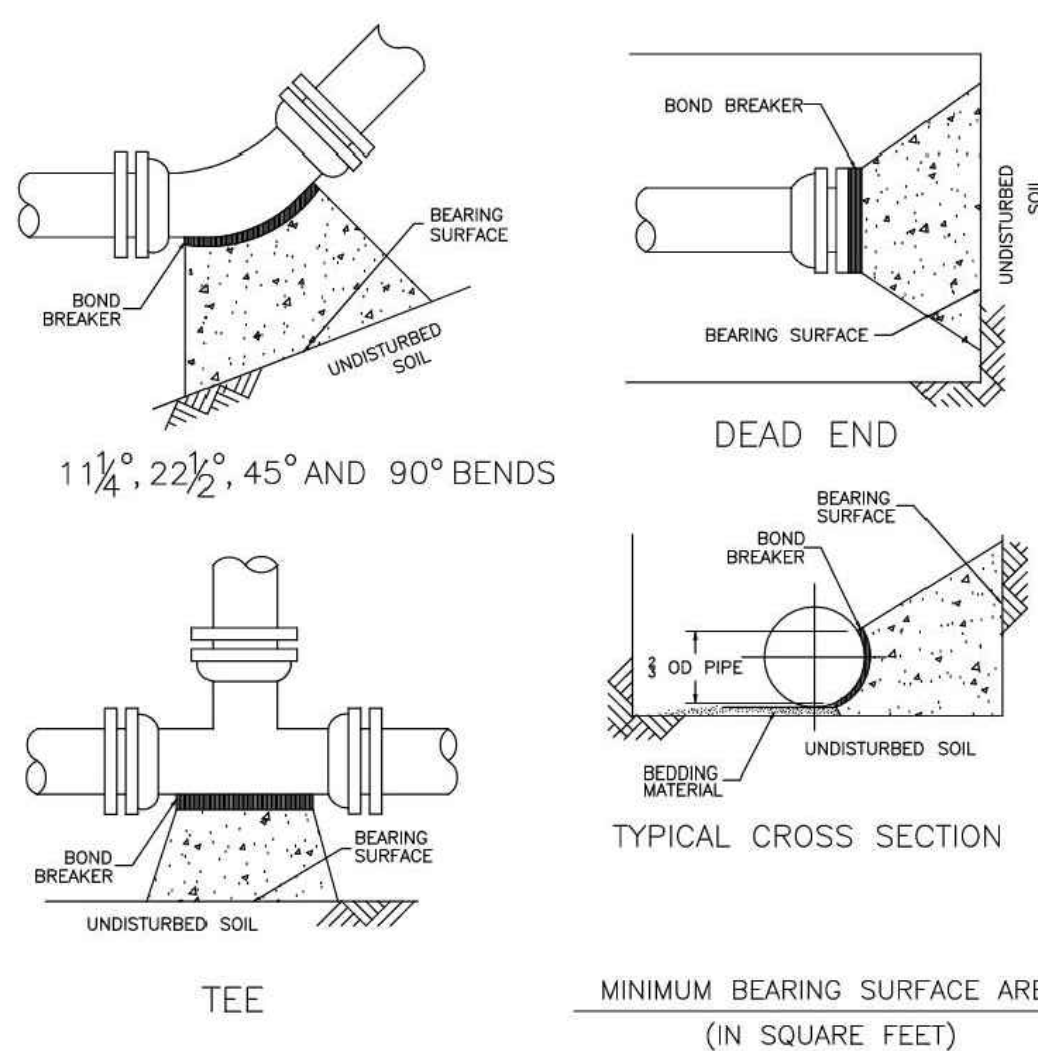
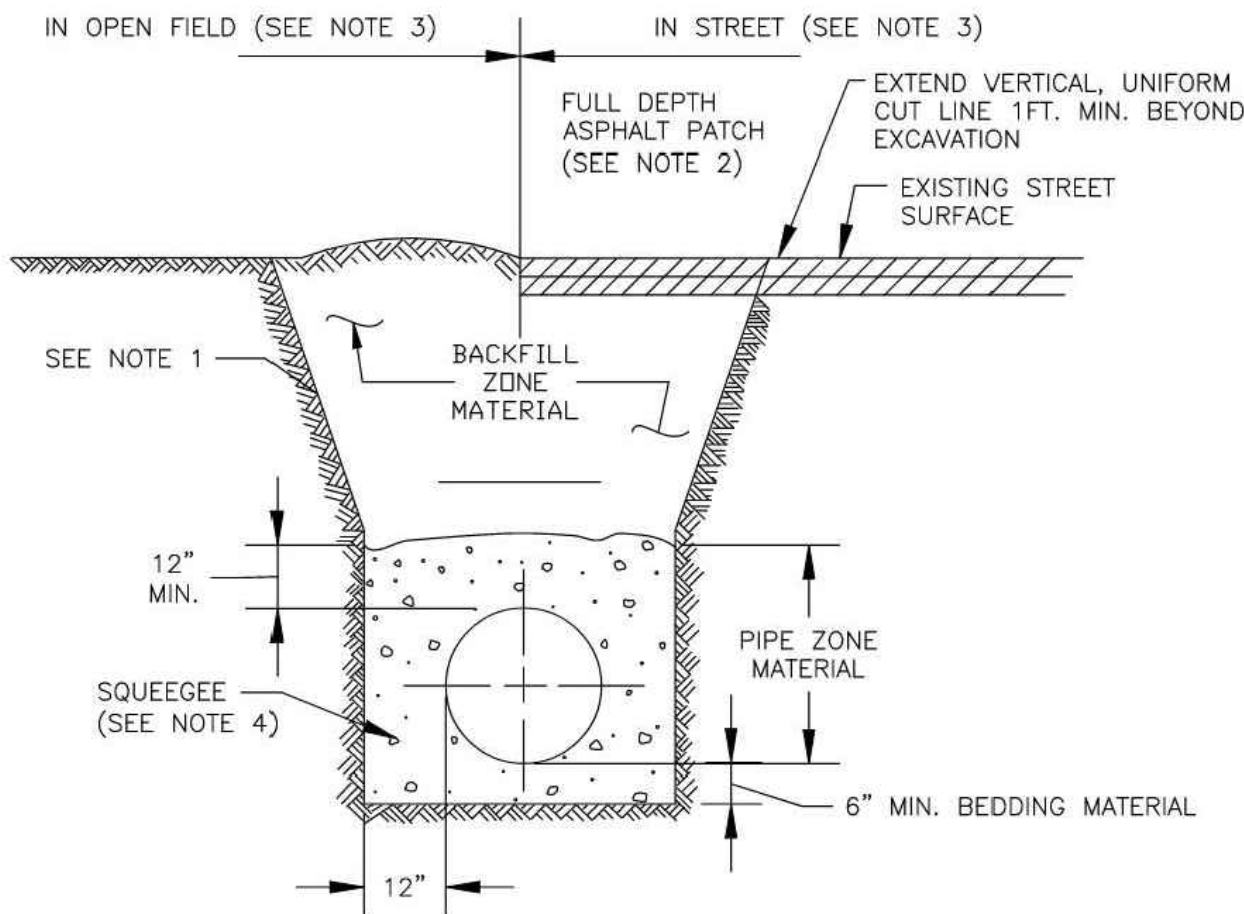
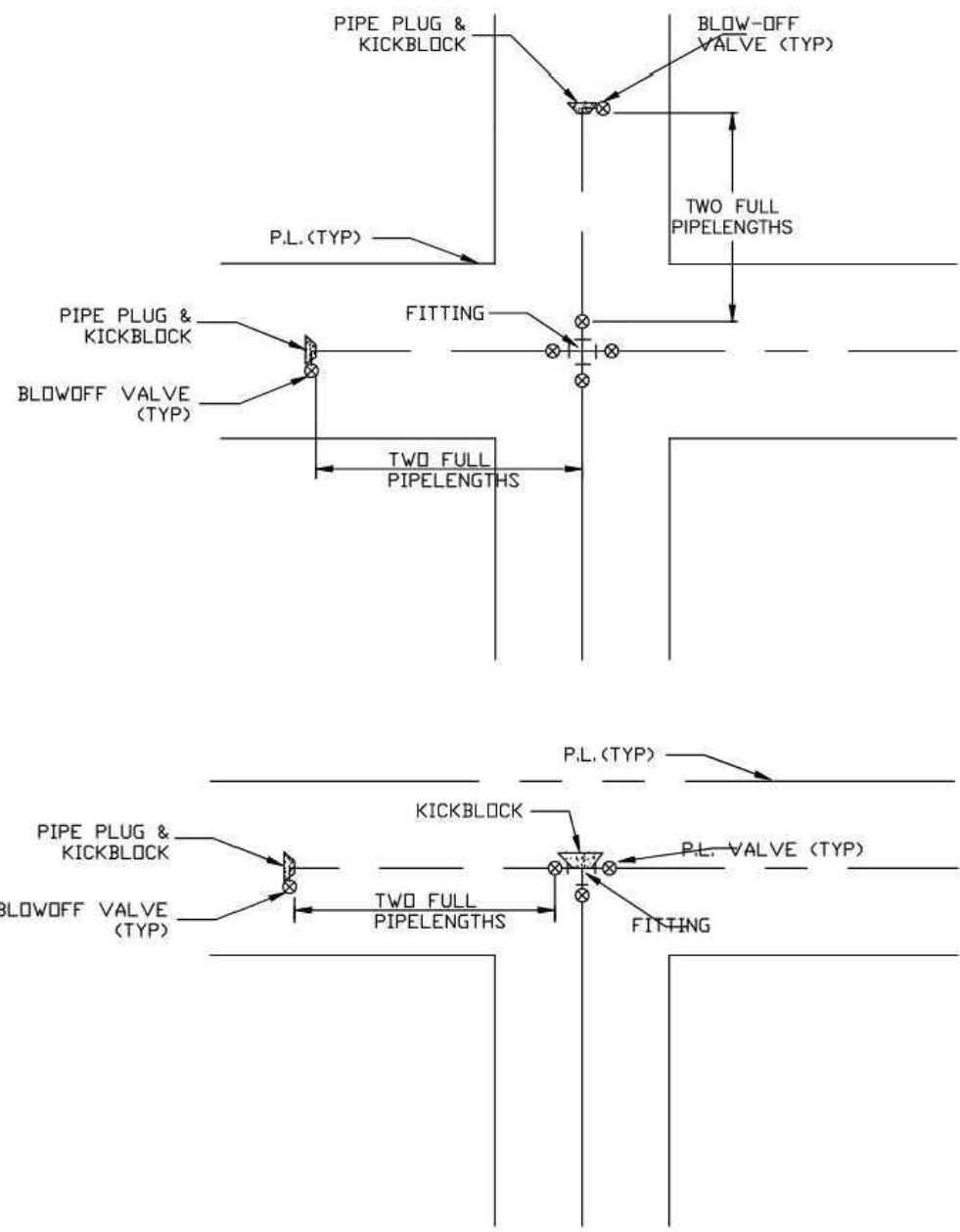


Exhibit B

OPINION OF PROBABLE COSTS

Engineers Cost Estimate

Prepared: CJR

Project: Non-Potable Water Main Venture Park

Job No: 50124419

Date: 7/27/2023

Item No.	Items	Quantity	Unit	Unit Cost		Total Cost	Comment
GENERAL CONDITIONS ITEMS							
1	Mobilization	1	LS	\$ 20,000.00	=	\$ 20,000.00	General mobilization of cost
GENERAL CONDITIONS ITEMS SUBTOTAL						\$ 20,000.00	
WATER							
1	6" Non-potable water main, HDPE	2390.00	LF	\$ 83.70	=	\$ 200,043.00	2 crossings, 1 under EX. Storm
2	6" Gate valve with box	4	EA	\$ 2,527.20	=	\$ 10,108.80	
3	6" Bends With Thrust Block	6	EA	\$ 924.00	=	\$ 5,544.00	
4	6" Plug with Temp Blowoff	2	EA	\$ 3,084.00	=	\$ 6,168.00	
5	Water Line Lowering at Storm Crossing	2	EA	\$ 9,720.00	=	\$ 19,440.00	
WATER SUBTOTAL						\$ 241,303.80	
TOTAL							
SUBTOTAL						\$ 261,303.80	
10% CONTINGENCY						\$ 26,130.38	
5% CONSTRUCTION ADMINISTRATION						\$ 13,065.19	
5% CONSTRUCTION SURVEY						\$ 13,065.19	
TOTAL CONSTRUCTION COST						\$ 313,564.56	