

BRIGHTON CITY COUNCIL RESOLUTION

ELEMENTS @ PRAIRIE CENTER APARTMENT PROJECT SUSTAINABILITY AGREEMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING A SUSTAINABILITY AGREEMENT BETWEEN THE CITY OF BRIGHTON AND PRAIRIE CENTER APARTMENTS, LLC FOR CERTAIN FEE REDUCTIONS IN CONSIDERATION OF CERTAIN PRIVATE SUSTAINABLE IMPROVEMENTS FOR THE MULTI-FAMILY RESIDENTIAL DEVELOPMENT TO BE KNOWN AS ELEMENTS @ PRAIRIE CENTER APARTMENT PROJECT, LOCATED ON LOT 2 OF PRAIRIE CENTER VILLAGE V SUBDIVISION, FILING NO. 1, MORE PARTICULARLY LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 16, AND IN THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO; AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY.

RESOLUTION NO. 2015-122

WHEREAS, Prairie Center Apartments, LLC, the “Developer”, proposes to build a multi-family residential development known as Elements @ Prairie Center Apartment Project, which will consist of two hundred eighty-eight (288) housing units in twelve (12) buildings (twelve 3-story/24-unit buildings) available to tenants at market rates, a club house and swimming pool, and other improvements (the “Project”); and

WHEREAS, the Developer is currently under contract to purchase Lot 2 of Prairie Center Village V Subdivision, Filing No. 1, which is approximately 15.02 acres, and is currently owned by THF Prairie Center Development, L.L.C., and construct the project thereon; and

WHEREAS, the Developer represents it will construct the Project with the specific water saving technologies (including, but not limited to, installation of low-flow plumbing fixtures in the units, efficient landscape irrigation, and xeriscape methodology); the construction and maintenance of a geothermal heating and cooling system; installation of conduit and junction box provided for future installation of solar panels; and the use of advanced framing and insulation techniques that provide a tight building envelope (all to be repaired, replaced and restored throughout the life of the Project); and, the Developer or its successors or assigns will monitor the water and sewer usage; and

WHEREAS, the application for development submitted by Prairie Center Apartments, LLC (the “Application”) requests that the City agree to certain incentives and financial assistance and includes an analysis and documentation to support and justify its request that the City approve certain reductions in the applicable development impact fees and other fees, charges and costs associated with the Project, to wit: (i) a 50% reduction of the Building Permit Fee; and (ii) charging the Plan Check Fee in the amount due for consultant review and in-house review including administrative fees (iii) a 45% reduction in the Water Plant Investment Fee; (iv) a 34% reduction in the Sewer Plant Investment Fee; (v) the applicable

Use Tax be paid in full at time of permit issuance with the provision to reimburse 50% of the Use Tax when the loop field for the geothermal system is installed; (vi) a credit for excess open space dedication in the amount of \$101,500 to be credited towards other fees; and (vii) a 45% reduction in the consumptive use credits (collectively, the “Sustainable Fee Incentives”); and

WHEREAS, in the referenced Application and justification for fee waivers and reductions, the Developer represents that by incorporating certain specified water saving technologies into the Development, indoor water consumption will be reduced by 38%, sewer generation will be reduced by 34%, and irrigation water consumption will be reduced by 63%, for a total combined reduction in water use of 45%; and

WHEREAS, the City Council finds that there is a valid public purpose and cognizable benefit and justification for encouraging owners and developers of new projects and the redevelopment of existing properties to identify and implement sustainable, as well as practical and measurable green building design, construction, operations and maintenance solutions thereby transforming the way built environments are designed, constructed, and operated whether as an individual building, home, or entire neighborhoods and communities; and

WHEREAS, the entire community benefits when a building, neighborhood or development is designed and built using strategies aimed at achieving high performance in key areas of human and environmental health: sustainable site development, water savings, energy efficiency, materials selection and indoor environmental quality; and

WHEREAS, the city staff have reviewed the application for the waiver or reduction of applicable development impact fees and other fees, charges and costs associated with the Project and have made written recommendations to the City Council regarding the particular waivers or reductions more particularly set forth in the attached Sustainability Agreement (**Exhibit A**); and

WHEREAS, the City Council has reviewed the Application and justification for the Sustainable Fee Incentives within the Sustainability Agreement and the staff recommendations, and hereby finds and determines that the justification therefor and the Applicant’s agreement to build a sustainable project within the City in exchange therefor, that the Project will serve and promote the interests and welfare of the citizens and residents of Brighton; and that Sustainable Fee Incentives are warranted and proper.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

SECTION 1. The reductions of the development fees, building permit and plan check fees, land dedications, and use taxes set forth in the attached Exhibit A are hereby approved, subject to final execution of a Sustainability Agreement between the City and Prairie Center Apartments, LLC for the Elements @ Prairie Center Project, upon acquisition of the Property by the Developer.

SECTION 2. The Sustainability Agreement, a copy of which is attached hereto as Exhibit A, is hereby approved.

RESOLVED THIS 20th DAY OF October, 2015.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

EXHIBIT A

**SUSTAINABILITY AGREEMENT
ELEMENTS @ PRAIRIE CENTER APARTMENT PROJECT
(Starts on the following page)**

**SUSTAINABILITY AGREEMENT
ELEMENTS @ PRAIRIE CENTER APARTMENTS PROJECT**

THIS AGREEMENT (hereinafter the “Agreement”) is made and entered into this _____ day of _____, 2015 by and between the **CITY OF BRIGHTON, COLORADO**, a home rule municipality of the County of Adams, State of Colorado (hereinafter called the “City”), and PRAIRIE CENTER APARTMENTS, LLC, a Colorado limited liability company authorized to conduct business in the State of Colorado (hereinafter referred to as “Developer”).

WHEREAS, the City has approved the Prairie Center Mixed Use PUD (“PUD Development”), owned by THF Prairie Center Development, LLC (“Master Developer”); and

WHEREAS, Prairie Center Village V Subdivision, Filing No. 1 was approved by City Council on October 20, 2015; and

WHEREAS, Developer proposes to develop the Elements @ Prairie Center Apartments Project (the “Development”) on Lot 2 of Prairie Center Village V Subdivision, Filing No. 1, and further described by the legal description attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, Developer has represented that the Development will consist of 288 units in twelve buildings (twelve 3-story/24-unit buildings) of multi-family housing on approximately 15.002 acres of land with unit sizes ranging from 716 to 1,214 square feet, with an occupancy range from 1 to 6 per unit; and

WHEREAS, Developer has agreed to incorporate sustainable measures into the design of the Development; and

WHEREAS, Master Developer has obligations to install the majority of the improvements for the PUD Development, including certain improvements related to the Development that are memorialized in other agreements with the City including, without limitation, the Prairie Center Village V Subdivision Filing No. 1 Development Agreement; and

WHEREAS, Developer’s obligations to install certain improvements related to the Development are set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant, and agree as follows:

SECTION 1
GENERAL CONDITIONS

- 1.1. Development Obligation.** Developer, its successors and assigns, shall be jointly and severally responsible for the performance of the agreements and covenants set forth herein as the same relate to both the public improvements and the private improvements associated with the Development.
- 1.2. Development Impact Fees and Other Fees.** Except as set forth in herein, the Developer shall pay all fees related to development of the Property at the time of issuance of the first building permit for all or any portion of the Development. The amount of such fees shall be the amount in effect at the time of permit issuance, or as modified herein. Any amendments to the kinds of fees or the amounts of said fees enacted by City Council after the date of this Agreement are incorporated into this Agreement as if originally set forth herein.
- 1.4. Brighton School District Capital Facility Fee.** Developer is aware of the Brighton School District Capital Facility Fee Foundation, whose purpose is to administer the collection from various Development Entities of a “Capital Facility Fee” for disbursement to School District 27J to fund a portion of the costs of providing additional capital facilities to service new growth, and has voluntarily agreed to be a participating Development Entity in that process and, accordingly, enter into a Participant Agreement. Thereby, Developer agrees to pay the capital facility construction fees as established by the written agreement between the Developer and the Brighton School District Capital Facility Fee Foundation to assist in funding capital facilities, so long as any such fees are based on documented need and rational methodology and are applied equitably to builders or developers across the district. Fees payable to the Foundation shall be payable directly to the appropriate entity and shall not be collected by the City of Brighton as part of the building permit or other administrative processes. After establishment and assessment of any school fees as aforesaid, as a condition of approval of the Certificate of Occupancy issuance for each building, the Developer shall provide evidence that such fees have been paid to the Foundation in accordance with this section. Payment shall be provided prior to the issuance of Certificate of Occupancy for each building.
- 1.5. Parks and Open Space Dedications.** The regulations of the City require the dedication of land for neighborhood and community parks, the payment of both neighborhood and community park development impact fees and the dedication of land for open space, or the payment of a fee in lieu thereof. According to the density of the Development, and consistent with the City requirements for public land dedication, the required dedication for the Development consisting of 288 units, is 17.90 acres (2.56 acres for a neighborhood park; 2.56 acres for a community park; and 12.79 acres for open space; for a total dedication requirement of 17.90 acres.) The Master Developer satisfied these required land dedications as more particularly shown on the Prairie Center Village V Subdivision, Filing No. 1 Final Plat and as agreed to in the Prairie Center Village V Subdivision, Filing No. 1 Development Agreement.

- 1.3 **City Regulations.** Developer agrees to follow any and all City Regulations and/or Ordinances in effect at the time of approval of the Final Development Plan (“FDP”), as may be subsequently amended from time to time, including, but not limited to, the applicable sections and provisions of the Land Use and Development Code, Title 17, Brighton Municipal Code.
- 1.5. **Engineering Services.** Developer agrees to furnish, at its sole expense, all necessary engineering services relating to the design of the landscaping improvements along the right-of-way adjacent to the Development, and Phase 1 of the trail Improvement as depicted in the Phasing Plan in the Prairie Center Village V Subdivision, Filing No. 1 Development Agreement. Developer agrees to furnish, at its sole expense, all necessary engineering services related to the design and construction of Phase 1 of the Neighborhood Park (Tract B, Prairie Center Village V Subdivision, Filing No. 1), and the Private Sustainable Improvements more specifically set forth in Section 2 below. Said engineering services shall be performed by or under the supervision of a Registered Professional Engineer and/or Registered Land Surveyor, and/or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law, and shall conform to the standards and criteria for public and private improvements as established and approved by the City as of the date of submittal to the City.
- 1.6. **Construction Standards.** Developer shall construct all Improvements whether Public or Private, required by this Agreement to be constructed for the Development, in conformance with the approved FDP and in full conformity with the specifications applicable at the time of construction plan approval, and in conformance with the construction drawings, plans and specifications approved in writing by the City in accordance with Section 1.7 of this Agreement.
- 1.7. **Plan Submission and Approval.** Developer shall furnish to the City complete plans for the Public Improvements required by this Agreement whether located on-site or off-site of the Development prior to commencing any construction work thereon, and for the Private Sustainable Improvements (see Section 2 below). The City shall promptly issue its written approval or disapproval of said plan(s). Said approval or disapproval shall be based upon standards and criteria for the improvements as established and approved by the City, and the City shall notify Developer of all deficiencies which must be corrected prior to approval. All deficiencies shall be corrected and said plans shall be resubmitted to and approved by the City prior to construction.
- 1.8. **Testing and Inspection.**
(a) Developer shall employ, at its own expense, a licensed and registered testing company, previously approved by the City in writing, to perform all testing of materials or construction that may be reasonably required by the City as to either the Public Improvements or the Private Sustainable Improvements to be installed by Developer, and shall furnish copies of test results to the City on a timely basis for City review and approval prior to commencement or continuation of that particular phase of construction.

In addition, at all times during said construction the City shall have access to inspect the materials and workmanship of said construction and all materials and work not conforming to the approved plans and specifications shall be repaired or removed and replaced at Developer's expense so as to conform to the approved plans and specifications.

(b) All work shown on the approved plans requires inspection by the applicable department/division of the City. Inspection services are provided Monday through Friday, except legal holidays, from 8:00 a.m. to 5:00 p.m., throughout the year. During the hours listed above, inspections shall be scheduled per applicable inspection scheduling policies in effect at time of inspection request. Requests for inspection services beyond the hours listed above shall be submitted a minimum of 48 hours in advance to the customer service center for approval. All requests for after-hours inspection services shall be made per the then applicable process as identified by the City at time of inspection request. If the request is approved, the Developer shall reimburse the City for all direct costs of the after-hours inspection services. If the request is denied, the work shall not proceed after the hours listed above.

- 1.9. **Trash, Debris, Mud.** Developer agrees that during construction of the Development and the Improvements, both Public and Private as described herein, Developer shall take any and all steps necessary to control trash, debris and wind or water erosion in the Development. If the City determines that said trash, debris or wind or water erosion causes damage or injury or creates nuisance, Developer agrees to abate said nuisance and/or to correct any damage or injury within five working days after notification by the City. If Developer does not abate said nuisance or if an emergency situation exists, to be determined by the City in its sole discretion, the City may abate the nuisance and/or correct any damage or injury without notice to the Developer at the Developer's expense. Developer also agrees to take any and all steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by the City. If Developer does not abate, or if an emergency exists, City may abate at the Developer's expense.
- 1.10. **Insurance OSHA.** Developer shall, through contract requirements and other normal means, guarantee and furnish to the City proof thereof that all employees and contractors engaged in the construction of Public Improvements are covered by adequate workmen's compensation insurance and public liability insurance, and shall require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).
- 1.11. **Indemnification and Release of Liability.** Developer agrees to indemnify and hold harmless the City, its officers, employees, agents or servants and to pay any and all judgments rendered against said persons on account of any suit, action or claim caused by, arising from or on account of acts or omissions by the Developer, its officers, employees, agents, consultants, contractors and subcontractors, and to pay to the City and said persons their reasonable expenses, including, but not limited to, reasonable attorney's fees and reasonable expert witness fees incurred in defending any such suit,

action or claim; provided, however, that Developer's obligation herein shall not apply to the extent said action, suit, or claim results from any negligent or willful acts or omissions of officers, employees, agents or servants of the City or the conformance with the requirements imposed by the City. Said obligation of Developer shall be limited to suits, actions, or claims based upon conduct prior to "final acceptance" by the City of the construction work for the Development. Developer acknowledges that the City's review and approval of plans for the Development is done in furtherance of the general public's health, safety and welfare and that no immunity is waived and no specific relationship with, or duty of care to, the Developer or third parties is assumed by such review and/or approval.

SECTION 2

SUSTAINABILITY

- 2.1. Sustainability.** Sustainability, generally, is based on the straightforward principle that everything that individuals need for their survival and well-being depends, either directly or indirectly, on the natural environment. Sustainability creates and maintains the conditions that permit fulfilling the social, economic and other requirements of present and future generations and is important to making sure that everyone has and will continue to have, the water, materials, and resources to protect human health and the environment. Sustainable developments are those which exceed standard development requirements and expectations by fulfilling present and future needs through the use, yet not harming renewable resources and unique environmental systems of a particular developable site: air, water, land, energy, and/or those of other off-site sustainable systems.

Sustainability has been identified by the Brighton City Council and City Staff as a priority for development, with the goal to develop, conduct and implement environmental, transportation, and energy-related activities to reduce the environmental impact of land uses, facilities and operations, and in particular building new, environmentally sustainable structures and improving the energy efficiency of older buildings.

For Brighton, the protection and wise use of water is a major component of the sustainability goals of the City Council. It is clear that the amount of water use has been expanding over the last decades as a result of the increase in residential and other development, irrigated farming and landscaping, population growth and economic development. At the same time it is recognized that water efficiency may be improved by increased demand management, improved water productivity by xeric landscaping and agriculture uses, minimizing the water intensity of goods and services, incorporation of water efficient appliances and equipment, use of non-potable water under appropriate circumstances, and forward looking planning for wise water use.

In line with the City's stated emphasis on sustainable development, the Developer presented to the staff of the City and then later discussed with the City Council the

proposed development of the Elements @ Prairie Center Apartments, a project anticipated to use significantly less water than existing projects of similar size through the integration and use of the latest water saving technologies identified as Private Sustainable Improvements in this Agreement. The Developer has suggested that indoor domestic water consumption will be reduced by the installation and maintenance of low flow showers and bath faucets, low flow toilets, and EnergyStar appliances in the units.

The Developer has also suggested that water consumption for outdoor irrigation and landscaping will be reduced by high-efficiency irrigation strategies, including point source drip irrigation systems, rain shut-offs and weather based evaporation controllers, and xeric landscaping designs. The Developer represents that the overall domestic and irrigation water savings will be 45% or more over what a similar traditional multi-family development would require.

By reducing the amount of domestic water used, the amount of wastewater generated by the improvements is also reduced. While it is difficult to quantify the reduction in wastewater treatment, the Developer estimates the savings will be in the range of 34% annually over what a similar traditional multi-family development would produce.

Studies provided by the Developer indicate that buildings account for approximately 40% of the energy use in the world today. Encouraging development that incorporates renewable energy aspects and thereby reducing energy consumption and use is a sustainable practice in line with the City's sustainability policy. The proposed Elements @ Prairie Center Apartments Project includes several unique and leading edge commitments to energy efficient and green construction improvements, that while initially more costly than traditional improvements, over the life of the Project return that investment and save energy for the residents of the Project and the community as a whole. As proposed, the Private Sustainable Improvements identified in the Agreement for this Project will include the installation and maintenance of one of the largest geothermal systems in an apartment project in the country; the Project will be built with advanced insulation techniques that provide tight building envelopes which will reduce the loss of heating and cooling from the building, and wiring for the future installation of solar panels, all of which will reduce heating and cooling costs and provide long term reduction of the energy needs to the buildings. It is estimated by the Developer that these measures will substantially reduce energy usage and provide long term benefit to the residents of the Development, energy providers, and the City at large. While it is difficult to quantify with specificity the benefit of such in this Project, it is clear that this Development embraces Brighton's commitment to renewable energy and sustainability.

Within the environmental aspect of sustainability is a recognition and acknowledgment of the importance of not only preserving existing open lands, but also assuring that developments contribute to either preservation or designation of lands for open space and park lands that are available to residents within a development and residents of the community at large.

2.2. Private Sustainable Improvements.

(A) The Developer has agreed to incorporate certain improvements in the Development that would increase the sustainability of the Development over the life of the Development. The Developer represents that certain improvements will substantially reduce energy usage and provide long term reduction of both domestic and irrigation water usage in the Development, and thereby provide long term benefits to the residents of the Development, energy and utility providers, and the City at large (the “Private Sustainable Improvements”).

(B) Prior to application for a building permit or other approvals necessary for the Development, the Developer shall submit to the City for its review and approval: construction plans, drawings and specifications for the following Private Sustainable Improvements represented by Developer to contribute to the sustainability of the Development, the design, construction, installation, costs and maintenance associated therewith are the sole responsibility of the Developer for the life of the Development:

- Geothermal heating and cooling systems for every residential building and clubhouse;
- All units meet/exceed Energy Star 3.0;
- Conduit and junction box provided for future installation of Solar Panels;
- Low flow showers and faucets;
- Low flow toilets;
- EnergyStar appliances;
- High efficiency irrigation system for landscaping;
- Point source drip-irrigation systems;
- Recycled materials in landscape furniture and materials
- Irrigation rain shut-offs and weather-based evaporation systems; and
- Xeric landscaping designs and material

(C) The Developer agrees that the drainage and landscaping improvements listed above are included in the Private Sustainable Improvements related to the Development thereof:

(1) Developer assumes sole responsibility for the timely completion of the on-site Drainage Plan for the Development, to be submitted to and approved by the City, and the construction and maintenance of all drainage improvements in said Plan. Maintenance as used herein shall include, without limitation, (i) keeping said drainage improvements in good working condition free of trash, debris, algae, standing water and other circumstances constituting a nuisance; and (ii) timely repair and/or replacement of broken, damaged, worn out improvements;

(2) Developer assumes sole responsibility for the timely completion of the Landscape Plan for the Development, to be submitted to and approved by the City, and the construction and maintenance of all landscaping in said Plan (excluding the landscaping within the right-of-way to be installed and maintained by the Master Developer, in accordance with the Prairie Center Village V Subdivision, Filing No. 1 Development Agreement) that is located on the Property. Maintenance as used herein shall include, without limitation: (i) keeping

all irrigation equipment in good working condition; (ii) timely upkeep, repair and/or replacement of all irrigation equipment; (iii) timely upkeep, repair and/or replacement of all landscaping material.

- 2.3. Water Dedication.** The Developer represents that the Development will consume 45% less water on an annual basis than other similarly sized multi-family developments. In order to promote more water conservation techniques, and in reliance on the representations made by the Developer, the City agrees to provide certain incentives to the Developer as more particularly set forth herein. The City does not assume any responsibility or liability for failure of the Development to meet the water consumption goals.

Developer has identified a block of 20 Fulton Ditch water shares that it will transfer to the City, which shares have been determined by the City's Water Engineer to provide 1.5 acre-feet per share, or a total of 30 acre-feet of consumptive use credits. This block of water shares is sufficient to meet 92.14% of the water supply requirements for this Development, which was identified as 32.56 acre feet of estimated consumptive use credits. In recognition of the 45% reduction of water usage in the Development, the City has approved a 45% reduction in the consumptive use credits required for this Development which equates to a revised requirement of 17.91 acre feet. This block of Fulton shares has a contract price of \$390,000.00 or \$19,500.00 per share or \$13,000.00 per acre foot. In addition to transferring the 20 Fulton Shares to the City, the Developer shall also pay the reasonable engineering fees incurred by the City, in the amount of \$2,000.00, for the review of the proposed water shares. The engineering fees shall be paid upon transfer of the shares to the City. The City hereby accepts the proposed water shares and their associated purchase price, and the Developer shall purchase said block of water shares in its entirety and transfer such shares to the City by conveyance documents acceptable to the City. Developer agrees to provide such documentation and execute such documents as may be required for the transfer of said shares, including, without limitation, any historical information known by the Developer regarding said shares, prior to and as a condition of the issuance of the first building permit.

In addition to satisfying the water dedication requirement set forth above, the Developer shall pay to the City fifty-five percent (55%) of the "with water rights" Water Plant Investment Fee for Multi Family connections, less \$153,703.00, which represents the portion of the purchase price of the approved block of water shares in excess of the 17.91 acre-feet reduced consumptive use credits required for the Development (30 acre feet provided - 17.91 acre feet required = 12.09 excess acre feet x \$13,000.00 per share = \$157,170.00) minus four tenths of one acre foot (0.4) for the pool and clubhouse water usage (0.4 acre-feet / 1.5 acre feet per share = .2667 x \$13,000.00 per share = \$3,467.00) for a total credit of \$157,170 - \$3,467 = \$153,703.00.

The Developer shall be granted a period of four complete landscape growing seasons to establish native landscaping in the Development, beginning from the date of the first irrigation water usage after the date of this Agreement, and ending at the end of the calendar year in which the fourth complete growing season has occurred.

Following this four landscape growing season period, there will be an additional five years in which the overall domestic and irrigation water usage will be evaluated for validation of the 45% reduction in water usage in the Development. If the maximum annual water usage over the entire site (*excluding swimming pool and clubhouse*) in any given calendar year during this five year evaluation period, including both domestic and irrigation usage (the “Total Water Usage Test”), is greater than 13,733,457 gallons, which is 55% of the baseline condition of 24,765,805 gallons, the Developer or its successors or assigns shall reimburse the City the proportionate share of the original purchase price of the block of water shares transferred to the City related to this maximum overage (the “Maximum Overage Year Amount”), calculated in the manner shown below for domestic and irrigation overages.

If the Maximum Overage Year Amount includes a domestic overage component and this amount is 13,310,781 gallons, the Development has used 2,000,000 gallons over the allowable domestic water usage and the Developer would therefore owe to the City $2,000,000/18,212,040$ or 11.0% of the 32.56 acre feet of total consumptive use credits estimated for the Development. This equates to 3.58 acre feet x \$13,000.00 per acre foot = \$46,540.00.

Additionally, if the Maximum Overage Year Amount includes an irrigation component, because of the significant reduction in return flows from the proposed reduction in irrigation usage, there will be a separate calculation used to determine the amount of acre feet to be reimbursed to the City for such irrigation usage overage. Irrigation return flows are approximately 17% of the amount used; the remainder is ‘consumed’. Therefore, the impact of the actual irrigation usage exceeding the anticipated irrigation usage is magnified. If the Maximum Overage Year Amount includes an irrigation component and this amount is greater than 3,604,570 gallons, which is 55% of the irrigation baseline condition of 6,553,765 gallons, the Developer shall reimburse the City the proportionate share of the original purchase price of the block of water shares transferred to the City, calculated in the manner shown in the following example.

For example, if the irrigation component of the Maximum Overage Year Amount is 5,000,000, the Development has used 1,395,430 gallons over the allowable 45% reduction and the Developer would therefore owe to the City $1,395,430 \times 83\%$, which is 1,158,207 gallons. This equates to 3.55 acre feet. The Developer would then owe the City $3.55 \text{ AF} \times \$13,000.00$ per acre foot=\$46,150.00.

Should the acre feet owed to the City exceed 11.69 acre feet under the Total Water Usage Test, Developer shall reimburse the City \$153,703.00 and Developer will transfer additional water shares to the City with sufficient consumptive use credits to provide the total acre feet owed by Developer up to a maximum additional 2.56 acre feet.

- 2.4. **Landscaping.** The Developer shall prepare and submit to the City for prior approval at the time of FDP submittal for the Development, a detailed and specific Landscape Plan for the Project as a Private Sustainable Improvement as referenced in 2.2(C)(2) herein.

Said Plan shall meet the requirements of the Land Use Code and address with particularity each type of landscape material and the commensurate square footage for each location within the Development, which Plan shall be the basis for analyzing the irrigation water usage addressed in paragraph 3.2 hereof. Said Plan shall also set forth the Developer's agreement to maintain said landscape improvements for the life of the Development, including without limitation, proper and necessary irrigation, upkeep, weeding, repair and replacement as appropriate.

- 2.5. All Private Sustainable Improvements defined and required by this Development Agreement and Exhibits attached hereto shall be constructed and approved by the City prior to the issuance of any Certificate of Occupancy for the Development or any portion thereof.
- 2.6. **Post Construction Monitoring of Sustainability Improvements.** The future viability of the Private Sustainable Improvements to be constructed and maintained by the Developer to ensure their sustainability for the life of the Development shall be monitored and enforced as set forth in Section 4 below, attached hereto and by this reference made a part hereof.

SECTION 3

DEVELOPMENT FEES

- 3.1. **City of Brighton Resolution #2014-115,** extending the deferral of certain development impact fees, is currently in effect until December 31, 2015 for new residential construction. The Development will be constructed in one phase with building permits expected to be issued in the year 2015 and in any event no later than by the year 2017. It is anticipated that all Final Certificates of Occupancy will be ready for issuance no later than the year 2017. Building permits will be issued on a per building basis.

Exhibit C-2 sets forth the Sustainable Fee Schedule for the Development and includes various reductions and waivers of specific fees. In order to reconcile Resolution 2014-115 and Exhibit C-2, the following shall apply:

- The fee reductions set forth in Resolution 2014-115 shall not apply to the Development; all fee reductions and waivers are those set forth in Exhibit C-2.
- The following fees are NOT eligible for deferral and shall be paid at the time of building permit issuance: (i) Use Tax; (ii) Metro Wastewater District Wastewater Fee; (iii) Plan Check Fee; (iv) Building Permit Fees; (v) Water Meter Fees; and (vi) Neighborhood Park Impact Fee.
- The following fees are eligible for deferral, on the condition that all building permits for the Development are issued no later than December 31, 2015 or if Resolution 2014-155, as amended is approved by City Council for subsequent years, and are paid no later than the issuance of each Certificate of Occupancy for

the multi-family buildings: (i) Water/Sewer Inspection Fees; (ii) Water Plant Investment Fees; (iii) Sewer Plant Investment Fees for the City of Brighton; (iv) Traffic Impact Fees; (v) Crossing Fee-Bridge Impact Fees; and (vi) Community Park Development Fees, on the basis of 1/12 of the sum of these fees prior to the issuance of a Certificate of Occupancy for each of the 12 residential buildings in the Development.

If Resolution 2014-115, as amended, is not extended by the City Council for subsequent year(s), and the first permit for this Development is issued on or after January 1, 2016, no fee deferral shall be available for the Development, and all applicable fees shall be paid at the time of first building permit issuance in the amounts as set forth in the City's Annual Fee Schedule for the City in effect at the time of permit issuance, with the same percentage reduction and waivers as specified in Exhibit C-2.

3.2. Water and Sewer Plant Investment Fee Reduction. In documentation provided to the City, attached hereto as Exhibit C-1 and incorporated herein by this reference, the Developer represents that by incorporating certain specified water saving technologies into the Development, indoor (domestic) water consumption will be reduced by 38%, the volumetric sewer generation will be reduced by 34%, and irrigation water consumption will be reduced by 63%, for a total combined reduction in water use of 45%.

In reliance on the representations of the Developer, and on the condition that the Developer will construct and maintain the Development with the specific water saving technologies indicated (including, but not limited to, installation of low-flow plumbing fixtures in the units, efficient landscape irrigation, and xeriscape methodology), the Developer guarantees that said specific water saving technologies will be maintained throughout the life of the Development (repaired, replaced, restored) and also on the condition that the post-construction monitoring of the water usage as more particularly set forth in Section 4 hereof continues to support such reductions, the City agrees to reduce the "With Water Rights" Water Plant Investment Fee by 45%, and the Sewer Plant Investment Fee by 34%, and reimburse a component of the then applicable "with water rights" Water Plant Investment Fee per the Water Dedication section of this Exhibit C. The reduced Water and Sewer Plant Investment Fees are set forth in Exhibit C-2 attached hereto. The water resource reimbursement discussed in the Water Dedication paragraph (2.3) also is set forth in Exhibit C-2.

Swimming Pool and Clubhouse. The Land Use and Development Regulations of the City require the developer to provide a 'neighborhood amenity'. To satisfy this requirement, the FDP includes a swimming pool and clubhouse. Developer shall install, at its expense, a separate water and sewer tap for the swimming pool and clubhouse in the Development, and the water/sewer usage for the swimming pool and clubhouse shall not be included in the calculations for reduced usage set forth above. Therefore, the Developer shall pay the full amount of the Water Plant Investment Fee and the Sewer Plant Investment Fee for the swimming pool and clubhouse. Developer shall construct the water lines for drinking fountains, dog bowls and other uses for the community garden and dog park amenities off the clubhouse water tap.

3.3. **Use Tax.** The City collects 2.5% of 50% of the total valuation in Use Tax for projects within Prairie Center. The Developer shall pay the full amount of Use Tax for the Development at time of building permit issuance. The City agrees to reimburse 50% of the Use Tax collected when the loop field for the geothermal system is installed, inspected by the City, and approved by the City. The reimbursement of the applicable amount of Use Tax shall be reimbursed administratively when installation and inspection is confirmed.

3.4. **Excess Open Space Dedication.** The Master Developer is dedicating 14.956 acres of open space to the benefit of the Development with the Prairie Center Village V Subdivision, Filing No. 1 final plat and also agreed to dedicate approximately 53 acres at a specific date specified within the Prairie Center Village V Subdivision, Filing No. 1 Development Agreement. Said open space dedication is in excess of the 12.79 acres required for open space dedication for the development (as referenced in Section 1.5 above). Additionally, the PUD anticipates the excess open space dedication of approximately 18 acres for the entire PUD area.

In reliance on the representations made by Developer that the Development will be unique and sustainable, and will feature significant renewable energy aspects as more particularly set forth herein, the City agrees to apply the value of three (3) acres of excess open space, \$101,500, toward the reduction of other fees as more particularly set forth in Exhibit C-2, attached hereto, and incorporated herein by this reference.

3.5. **Development Impact Fees Reductions (Summary).** Developer has represented that the Elements @ Prairie Center Apartments Project (the “Development”) will consist of 288 units in twelve buildings (12–3 story/24 unit buildings) of multi-family housing on approximately 15.002 acres of land. The unit sizes will range from 716 to 1,214 square feet, with an occupancy range from 1 to 6 per unit.

Developer has conducted an analysis and provided documentation to the City to support and justify its request that the City approve certain reductions in the applicable Development Impact Fees and other fees associated with the Development. The City has reviewed said request and determined that the following incentives are justified:

- i. 50% reduction of the **Building Permit Fee**;
- ii. **Plan Check Fee**- The Developer shall pay 100% of the actual cost (hourly rate and administrative fees for consultant review and in-house review) of plans;
- iii. Collection of 100% of the applicable **Use Tax** at time of permit issuance with a reimbursement of 50% of the **Use Tax** collected as outlined in Section 3.3 above.
- iv. 45% reduction in the **With-Water Water Plant Investment Fee**;
- v. \$153,703 reduction the applicable **With-Water Plant Investment Fee**;
- vi. 34% reduction in the **Sewer Plant Investment Fee (for the City of Brighton fees only and excludes the Metro Wastewater Reclamation District fees that will be payable at the full then-applicable rate)**;
- vii. Excess open space in the amount of \$101,500 to be applied as a reduction to the **Community Park Fees**;

See Exhibit C-2 attached hereto and by this reference made a part hereof.

SECTION 4

POST CONSTRUCTION MONITORING OF SUSTAINABILITY MEASURES

4.1. **Post Construction Monitoring of Water and Sewer Usage.** Developer has agreed to install separate metering for domestic and irrigation water consumption within the Development in order to facilitate the monitoring of the purported savings in water consumption (both domestic and irrigation) and sewer generation. To that end, the Developer shall install a separate domestic meter at each of the twelve (12) buildings in the Development to monitor domestic water usage and separate irrigation meters as approved in the FDP civil plan sets to monitor irrigation water usage. Said meters shall be located outside of each building in separate pits adjacent to each other. These meters shall be installed with remote read equipment and collector compatible with the City's existing meter reading systems at the time of installation of the meters. The City shall own and operate all meters and remote read equipment and collectors after installation approval and shall be granted ingress/egress access to those meters for the purposes of maintenance, operation, and reading. All meter installations must be approved through appropriate City channels in effect at time of installation and installation of remote read equipment and collectors shall be coordinated with the Utilities Department and the Information Technology Department to ensure compatibility of the installation with the City's infrastructure. Developer may not install meters outside of the appropriate City channels in effect at time of installation. Necessary easements for City access to all meters shall be provided on the final plat.

1. **Wastewater (Sewer) Surcharge.** In reliance on the Developer's representation that wastewater volumetric discharge from the Development will be reduced by 38%, and the Developer's agreement to cooperate with the City in regard to monitoring water usage for the Development, the Developer and City agree on the following:

- If domestic water usage in a given month is greater than that shown in Table 1 of this Agreement, the Development shall be charged a surcharge equal to 10% of the City's sewer rate for domestic usage in the amount in effect at the time the calculations occur, using the Commercial monthly sewer service rate times the domestic overage above the value shown in Table 1 for that month.
- The evaluation of the applicability of a wastewater (sewer) surcharge shall continue on a monthly basis for the life of the Development. Said surcharge shall be implemented in any month for which usage meets the criterion set forth in the preceding bullet point.
- The surcharge shall be subject to the same collection procedures used by the City to collect other delinquent utility charges including but not limited to placement of lien on the property, curtailing service, and certification to the treasurer as delinquent taxes.

- Proceeds from the wastewater (sewer) surcharge shall be placed in the City’s Wastewater (Sewer) Fund.

2. **Water Usage/Monitoring/Surcharge.** In reliance on the Developer’s representation that the total annual water usage within the Project will be reduced by 45% as compared to the baseline scenario and the Developer’s agreement to cooperate with the City in regard to the installation of separate meters and the monitoring of said water usage, the Developer and City agree on the following:

- It will take four (4) complete growing seasons from the date of the first irrigation water usage for the landscape to become established and the irrigation regulated.
- The Developer’s Design Scenario (see Table 1 below) for domestic water usage, as represented in documentation provided to the City by the Developer is 11,310,781gallons /year. This represents a 38% saving compared to the baseline domestic usage of 18,212,040 gallons/year.
- The Developer’s Design Scenario (see Table 1 below) for irrigation water usage, after the four (4) growing seasons, as represented in documentation provided to the City by the Developer is 2,422,545 gallons/year. This represents a 63% percent savings compared to the baseline of the irrigation water needed to implement and sustain the landscape materials more particularly set forth in the landscape plan submitted by the Developer for the Development.
- The City will begin monitoring domestic usage for the purpose of verifying compliance with the proposed domestic usage immediately upon installation of appropriate water meters. The City shall start monitoring the total water usage from both domestic and irrigation taps in the Development for the purpose of verifying compliance with the proposed site-wide water usage at the end of the year of the fourth full growing season.
- During the initial four growing seasons set aside for landscaping establishment, the City will compare the total domestic monthly water usage across the entire Development (*excluding pool and clubhouse usage*) to the Developer’s Design Scenario as shown below on a monthly basis.

Table 1: Design Scenario/Allowed Monthly Domestic Usage

January	February	March	April	May	June
960,642	867,676	960,642	929,653	960,642	929,653
July	August	September	October	November	December
960,642	960,642	929,653	960,642	929,653	960,642

- After the end of the four-year period set aside for landscaping establishment, the City will compare the total domestic plus irrigation actual monthly water usage (*excluding pool and clubhouse usage*) to the Developer’s Design Scenario as follows:

Table 2: Allowed Total Monthly Usage

	January	February	March	April	May	June
Domestic	960,642	867,676	960,642	929,653	960,642	929,653
Irrigation	-	-	-	276,923	319,323	406,981
<i>Total</i>	960,642	867,676	960,642	1,206,576	1,279,965	1,336,634
	July	August	September	October	November	December
Domestic	960,642	960,642	929,653	960,642	929,653	960,642
Irrigation	465,385	417,174	302,417	234,346	-	-
<i>Total</i>	1,426,027	1,377,816	1,232,070	1,194,988	929,653	960,642

4. **Excess Usage Calculations.**

- Irrigation and domestic water usages shall be billed on a standard billing cycle and shall be charged at the then applicable water rates.
- During the initial 4- growing seasons establishment period, only domestic usage (*excluding pool and clubhouse usage*) will be monitored for excess usage for imposition of the surcharge. If the domestic water usage, as a whole in a given month, is greater than the amount shown in Table 1, then a surcharge shall be applied for that month. This surcharge shall be equal to 10% of the City’s water rate for domestic usage in the amount in effect at the time the calculations occur, using the Commercial monthly water service rate times the amount of domestic water usage above the amount shown in Table 1.

After the initial 4-growing seasons establishment period, both irrigation and domestic usage (*excluding pool and clubhouse usage*) will be monitored as a whole for excess usage for imposition of the surcharge. If the domestic and irrigation usage site-wide in a given month is greater than the amount shown in Table 2, then a surcharge shall be applied for that month, equal to 10% of the City’s water rate for irrigation usage in the amount in effect at the time the calculations occur, using the Commercial monthly water service rate times the amount of total domestic and irrigation usage above the amount shown in Table 2.

- The evaluation of the applicability of a water surcharge shall continue on a monthly basis for the life of the Development. Said surcharge shall be implemented in any month for which usage meets the criterion set forth in the preceding bullet point.
- The surcharge shall be subject to the same collection procedures used by the City to collect other delinquent water utility charges including but not limited to placement of lien on the property, curtailing service, and certification to the treasurer as delinquent taxes.
- Notwithstanding the above, when determining whether the Developer owes the City any amounts for water usage in excess of the amounts shown in the tables above, the following qualifications shall apply:
 - Should the Developer be required to pay back any of the credits pursuant to the Water Dedication paragraph 2.3 above, the allowed water usage amounts shown in Tables 1 and 2 above will be increased by the annual volume of 760,620 gallons or fractional equivalent thereof for each additional acre foot or fraction thereof of water dedication for increased domestic usage (rationed out over the 12 months by the same ratios as the monthly domestic usage amounts shown Tables 1 and 2), and by 393,079 gallons or fractional equivalent thereof for each additional acre foot or fraction thereof of water dedication for increased irrigation usage (rationed out over the irrigation months using the same ratios as the monthly irrigation usage amounts shown in Table 2).
 - At any time during the term of this Agreement, Developer will have the option to terminate the water use surcharges imposed by this Agreement in exchange for the payment in full of a) the discounted water and sewer plant investment fees; and b) full repayment of all credits provided by the City to the developer for reduced water dedications under the Water Dedication section of this Agreement.

SECTION 5

OTHER IMPROVEMENTS

5.1 **Drainage Improvements.**

(a) Drainage improvements identified on the FDP shall be constructed by Developer in accordance with plans and specifications approved by the City [see 2.2(C)(1) above]. Developer shall initiate no overlot grading until the City approves drainage improvement plans in writing.

(b) **Stormwater Management at Construction Site.** During construction of the Development the Developer shall provide temporary erosion and sediment control during overlot grading until drainage improvements are installed and stabilized as dictated by the EPA MS4 Phase II Stormwater regulations for sites disturbing one or more acres.

(c) **Post-Construction Stormwater Management.** Once the construction of drainage improvements are completed, all the improvements located on private property in the Development shall be operated, repaired, maintained, and replaced as necessary by the landowner(s) of the property on which the improvements are located to ensure they continue serving their intended function in perpetuity; unless or until the City relieves the landowner(s) or responsible person of that responsibility in writing.

(d) The requirements of subsections 5.1(a), (b), and (c) described herein shall be performed in conformance with all applicable State and Federal stormwater regulations; the City of Brighton Municipal Code Chapter 14 Stormwater Ordinance; approved Erosion Control Plan; City of Brighton Standards and Specifications Manual and by Urban Drainage Flood Control District Volume 3 (Latest Edition).

(e) **Drainage/Detention/Retention Pond Maintenance.** The Developer shall provide documentation of conformance with the regional drainage plans for City approval. This documentation must show any expected variances from the regional drainage plan and how any variances that are detrimental to the appropriate operation of the regional system will be mitigated.

All on-site swales, water quality facilities, and stormwater conveyances or storage shall be owned, operated, and adequately maintained by the Developer. These facilities shall be kept in good condition and repair, and free of trash, debris, algae, standing water, and other nuisance. Such maintenance responsibilities shall include but not be limited to the installation and maintenance of landscaping as well a provision for weed control and replacement of dead plant material.

5.2. Trail Design. As required in the Prairie Center Village V Subdivision, Filing 1 Development Agreement, the Developer is responsible for providing the design of Phase 1 of the 10' wide trail adjacent to the Brighton Lateral Ditch in Tract C, Prairie Center Village V Subdivision, Filing 1, along the entire length of the Development. Developer shall complete and submit said design to the City for approval with the Final Development Plan for the Development. It is the responsibility of the Master Developer to construct and provide the financial guarantee for such trail.

5.3. Neighborhood Park (Tract B). As required in the Prairie Center Village V Subdivision, Filing 1 Development Agreement, the Developer shall provide complete plans for Phase 1 of the Neighborhood Park at the time of Final Development Plan review for the Development. The Developer is responsible for constructing Phase 1 of the Neighborhood Park in conjunction with the construction of the Development and shall complete construction prior to, and as a condition precedent to, the issuance of the last Certificate of Occupancy for the Development. The estimated cost to construct Phase 1 of the Neighborhood Park is attached hereto as **EXHIBIT B**. The Developer shall pay all fees associated with the construction of the Neighborhood Park and shall also pay the Park Impact Fees and provide the water tap and pay the associated water tap fees for Phase 1 of the Neighborhood Park at full cost, in the amount in effect at the time of permit issuance. Collection of Park Impact Fees shall occur at time of building permit

issuance for the first multi-family building in the Development. When construction of Phase 1 of the Neighborhood Park is complete, the Developer shall remit a sufficiently detailed final cost to the City, including all paid invoices associated with the Developer's construction and completion of Phase 1 of the Neighborhood Park and all building permit fees and water tap fees. Upon verification by the City that such accounting accurately represents the cost incurred and paid by the Developer for proper completion of Phase 1 of the Neighborhood Park, the City shall remit directly to the Developer all Park Development Fees collected for the Development, not to exceed the actual cost and amount of fees collected. The Developer shall maintain the Neighborhood Park for 1 year after the completion of the park and after the 1 year maintenance by the Developer, the Master Developer shall maintain Phase 1 of the Neighborhood Park as required in the Prairie Center Village V Subdivision, Filing 1 Development Agreement. Developer is not required to submit an Improvement Guarantee for the Phase I Neighborhood Park as the Developer shall pay the Neighborhood Park Fee at the time of the issuance of the first building permit for the Development in the amount in effect at the time of payment.

- 5.4. **Right-of-Way Landscape Improvements** Developer is responsible for furnishing a complete final landscape plan to the City Manager or Manager's designee for approval prior to installation of any landscape improvements for the right-of-way landscaping adjacent to the Development that does not currently contain landscaping. The Master Developer is responsible for the installation of landscaping and irrigation of the landscaping within right-of-way.

SECTION 5 MISCELLANEOUS TERMS

- 5.1. **Breach of Agreement.** In the event that the Developer should fail to timely comply with any of the terms, conditions, covenants and undertakings of this Agreement, the Exhibits attached hereto, or any provisions of the Brighton Municipal Code related to development, and if such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach of the Developer by the City, unless the City agrees in writing, and in its sole discretion, designates a longer period, then the City may (i) withhold any additional infrastructure permits, building permits, certificates of occupancy, or provision of new utilities fixtures or services; and/or (ii) pursue any remedy that the City deems appropriate, whether in law or in equity, including a review and recovery of the waived/reduced fees, charges and other cost reductions more particularly set forth in the Special Provisions, Exhibit C. The City's pursuit of any remedies due to the breach by the Developer may include the recovery of costs incurred by the City, including, but not limited to, administrative costs, expert witness fees, and reasonable attorney fees, which shall be the responsibility of the Developer.
- 5.2. **Recording of Agreement.** The City shall record this Agreement at Developer's expense in the office of the Clerk and Recorder in Adams County, Colorado, and the City shall retain the recorded Agreement.
- 5.3. **Binding Effect of Agreement.** This Agreement shall run with the land included within

the FDP and shall inure to benefit of and be binding upon the successors and assigns of the parties hereto.

- 5.4 Assignment, Delegation and Notice.** Developer shall provide to the City for approval written notice of any proposed transfer of title to any portion of the Property and of the Development Agreement obligations to any successor or assign, as well as arrangements, if any, for delegation of the improvement obligations hereunder. Developer, its successors or assigns shall, until written City approval of the transfer of title and delegation of obligations, which approval shall not be unreasonably withheld, be jointly and severally liable for the obligations of Developer under this Agreement.
- 5.5 Modification and Waiver.** No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.
- 5.6 Addresses for Notice.** Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

CITY:

City of Brighton
City Manager
500 South 4th Avenue
Brighton, CO 80601

With a copy to:

Margaret R. Brubaker, Esq.
Mehaffy Brubaker & Ernst, LLC
City Attorney
500 South 4th Avenue
Brighton, CO 80601

DEVELOPER:

Prairie Center Apartments, LLC
P. David Pretzler
C&A Companies
7991 Shaffer Parkway, Suite 200
Littleton, CO 80127

With a copy to:

Barbara J.B. Green, Esq.
Sullivan Green Seavy LLC
3223 Arapahoe Avenue Suite 300
Boulder, CO 80303

or to such other address or the attention of such person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

- 5.7 Force Majeure.** Whenever Developer is required to complete construction, maintenance, repair, or replacement of improvements by an agreed-upon deadline, the City may, in its sole discretion, grant a reasonable extension of time if the performance cannot as a practical matter be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of Developer.
- 5.8 Approvals.** Whenever approval or acceptance of a matter is required or requested of the City pursuant to any provisions of the Agreement, the City shall act reasonably in responding to such matter.
- 5.9 Title and Authority.** Developer warrants to the City that it is the record owner for the Property within the Development or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned further warrant having full power and authority to enter into this Agreement.
- 5.11 Severability.** This Agreement is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of Developer or any agent thereof, any provision of the Agreement is held to be violate of the city, state, or federal laws and hereby rendered unenforceable, the City in its sole discretion, may determine whether the remaining provisions will or will not remain in force.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written above.

CITY OF BRIGHTON, COLORADO
A Home Rule Municipality

By: _____, Mayor

ATTEST:

By: _____
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, Esq.
City of Brighton Attorney

DEVELOPER/OWNER
Prairie Center Apartments, LLC

By: _____
Name
Title

ATTEST:

Name

COUNTY OF ADAMS)
) SS
STATE OF COLORADO)

The foregoing Agreement was acknowledged before me this ____ day of _____, 20__ by _____, the _____ of Prairie Center Apartments, LLC, and _____, its Secretary.

By: Notary Public

My Commission Expires: _____

EXHIBIT A

[LEGAL DESCRIPTION]

Lot 2 Prairie Center Village 5 Subdivision No. 1

PROPERTY DESCRIPTION

A PARCEL OF LAND LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 16, AND IN THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 1 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 1 SOUTH, RANGE 66 WEST, 6TH P.M., BEING MONUMENTED AT THE WEST END BY A 3-1/4" ALUMINUM CAP IN RANGE BOX, STAMPED: JR ENG LS 30099, AND AT THE EAST END BY A 3-1/4" ALUMINUM CAP, STAMPED: JR ENG LS 30099, AND BEING CONSIDERED TO BEAR N89°26'28"E.

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 21;

THENCE S84°40'01"E, A DISTANCE OF 841.14 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF 144TH AVENUE RIGHT-OF-WAY DEDICATION PLAT AS RECORDED BY INSTRUMENT NUMBER 20060323000297110 IN THE RECORDS OF THE ADAMS COUNTY CLERK AND RECORDER, SAID POINT ALSO BEING THE **POINT OF BEGINNING**;

THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID EAST 144TH AVENUE RIGHT-OF-WAY DEDICATION PLAT THE FOLLOWING SIX (6) COURSES:

1. N16°40'38"W, A DISTANCE OF 37.60 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 45.00 FEET;
2. NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 87°00'42", AN ARC LENGTH OF 68.34 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1,267.00 FEET;
3. EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°49'52", AN ARC LENGTH OF 84.72 FEET;
4. TANGENT TO SAID CURVE, NORTH 66°30'12" EAST, A DISTANCE OF 359.12 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1,133.00 FEET;
5. EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°00'00", AN ARC LENGTH OF 454.82 FEET;
6. TANGENT TO SAID CURVE, NORTH 89°30'12" EAST, A DISTANCE OF 54.65 FEET;

THENCE DEPARTING SAID SOUTHERLY BOUNDARY, SOUTH 14°32'19" EAST, A DISTANCE OF 163.92 FEET;

THENCE SOUTH 48°03'08" EAST, A DISTANCE OF 89.58 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 100.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 69°36'10" WEST;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°58'34", AN ARC LENGTH OF 3.45 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 22°22'24" WEST, A DISTANCE OF 82.28 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 300.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 52°14'11", AN ARC LENGTH OF 273.51 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 280.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30°28'51", AN ARC LENGTH OF 148.96 FEET;

THENCE NON-TANGENT TO SAID CURVE, NORTH 89°36'38" WEST, A DISTANCE OF 123.63 FEET;

THENCE SOUTH 00°09'10" WEST, A DISTANCE OF 100.42 FEET;

THENCE SOUTH 89°59'55" WEST, A DISTANCE OF 760.28 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 403.50 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 88°32'07" WEST;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 32°21'46", AN ARC LENGTH OF 227.91 FEET;

THENCE TANGENT TO SAID CURVE, NORTH 30°53'53" WEST, A DISTANCE OF 137.91 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 221.50 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14°13'15", AN ARC LENGTH OF 54.98 FEET;

THENCE TANGENT TO SAID CURVE, NORTH 16°40'38" WEST, A DISTANCE OF 59.92 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 15.002 ACRES, (653,497 SQUARE FEET), MORE OR LESS.

EXHIBIT B
PHASE 1 OF NEIGHBORHOOD PARK IMPROVEMENTS
COST ESTIMATE

Type of Improvements	Quantity/ Length	Total Estimated Cost	Date of City Acceptance
Phase 1 Neighborhood Park Improvements			
Site Preparation	1 LS	\$2,500	
Grading	1 LS	\$5,000	
Canopy Trees (2" Cal.)	11 EA	\$4,675	
Ornamental Trees (2" Cal.)	15 EA	\$4,875	
Evergreen Trees (6' Ht.)	3 EA	\$975	
Planting Beds	1,900 SF	\$9,500	
Metal Edger	570 LF	\$1,710	
Sod	8,115 SF	\$4,463	
Native Seed (Soil Prep and Seed)	7,764 SF	\$2,330	
Irrigation (Planting Bed)	1,900 SF	\$7,600	
Irrigation (Sod and Native Seed)	15,880 SF	\$12,704	
Playground Equipment	1 LS	\$28,250	
Fibar Safety Surface	3,035 SF	\$10,622	
Volleyball Sand Court	1 LS	\$20,000	
Sport Court (6" post tension concrete)	1 LS	\$25,000	
Picnic Area with Shade Structure	1 LS	\$15,000	
Entry Feature/Signage Allowance	1 LS	\$25,000	
Concrete Paving (4" thick)	1,408 SF	\$5,632	
Decorative Concrete Paving (4" thick)	460 SF	\$3,220	
Concrete Paving (6" thick, fiber reinf)	900 SF	\$51,584	
8" Concrete Curb	360 LF	\$2,880	
3-Rail Fence	100 LF	\$6,000	
Site Furnishings	1 LS	\$8,000	
Type C Inlet	1 EA	\$3,500	
8" PVC	107 LF	\$5,135	
6" PVC	105 LF	\$3,675	
6" PVC Cleanout	2 EA	\$500	
6" PVC Cap	2 EA	\$200	
Grading	9,000 CY	\$20,250	

EXHIBIT C-1
DEVELOPER'S WATER/SEWER USAGE ANALYSIS
(Following page)

Water Summary Table

Project Name:	Prairie Center
Project Location:	Brighton, CO
Date:	May 14, 2015

Interior Fixture Usage

Baseline Scenario			
Fixture/EndUse	Flow Rates (EPA Req.)	% of Total Water Usage	Average Use* in Gallons
Toilet	1.60 gpf	26.7%	18.5
Clothes washer	12 gpcf	21.7%	15.0
Shower	2.5 gpm	16.8%	11.6
Faucet	2.5 gpm	15.7%	10.9
Dishwasher	8.0 gpc	1.4%	1.0
Baths	15.0 gpm	1.7%	1.2
Other Domestic Uses/Leak Rate	N/A	15.9%	11.1
Avg. gallons per capita per day*			69.30

Design Scenario			
Fixture/EndUse	Flow Rates - Proposed	% Reduction from EPA Standard	Average Use Based on Proposed Flow Rates
Toilet	1.1 gpf	31.25%	12.72
Clothes washer	6.0 gpcf	50.00%	7.50
Shower	1.5 gpm	40.00%	6.96
Faucet	1.0 gpm	60.00%	4.36
Dishwasher	4.3 gpc	46.88%	0.53
Baths	6.0 gpm	60.00%	0.48
Other Domestic Uses/Leak Rate	N/A	5.50%	10.49
Avg. gallons per capita per day*			43.04

Anticipated Prairie Center Project Domestic Usage

Baseline Scenario					
	Avg. gallons per capita per day*	# of Units	Total Usage Per Day	Total Usage Per Year	Total Usage Per Year (x2.5 persons per unit)
Residential Use	69.30	288	19,958	7,284,816	18,212,040
Total Domestic Site (not including pool)				7,284,816	18,212,040
Design Scenario					
	Avg. gallons per capita per day*	# of Units	Total Usage Per Day	Total Usage Per Year	Total Usage Per Year (x2.5 persons per unit)
Residential Use	43.04	288	12,395	4,524,312	11,310,781
Total Domestic Site (not including pool)				4,524,312	11,310,781
Water Savings (Design Scenario)				2,760,504	6,901,259
% Water Savings (Design Scenario)				38%	38%

*Average Use information provided by "Residential Water Use Summary", Aquacraft, Inc. and American Water Works Association Research Foundation.

Exterior Landscape Irrigation Water Summary

	Landscape Area (acres)	% Irrigated Turf Grass	% Irrigated Native Grass	% Irrigated Ornamental Plantings	% Non-Irrigated Native Grass	Water Use (Gal/year)
Baseline Scenario Totals	4.86	79%	0%	21%	0%	6,553,765
Design Scenario Totals	4.86	16%	0%	41%	43%	2,422,545
Water Savings (Design Scenario)						4,131,220
% Water Savings (Design Scenario)						63%

Projections are based on a six day per week, six hour per day, peak season watering schedule.
 Peak season application for Spray Irrigated Bluegrass Sod is 2.46" per week.
 Peak season application for Spray Irrigated Native is 1.14" per week.
 Peak season application for Spray Irrigated Shrubs and Perennials is 1.23" per week.
 Peak season application for Drip Shrubs and Perennials is 0.89" per week.

Interior and Exterior Water Savings Total

Total Interior & Exterior Baseline Use Per Year:	24,765,805
Total Interior & Exterior Design Scenario Use Per Year:	13,733,326
Water Savings (Design Scenario):	11,032,479
% Water Savings (Design Scenario):	45%
	26,255,850
	14,440,718
	11,815,133
	45%

EXHIBIT C-2
SUSTAINABILITY FEE SCHEDULE
(Following 2 pages)

Fee Reduction, Deferral, and Credit Table

Example is based on: project valuation of \$30,000,000; 288 units in 12 buildings w/2” taps/building; and, does not include fees associated with the clubhouse/pool/dog park/park, which will be paid at full cost of construction and not deferred. Irrigation tap is shown on table as 3”.

Fee Description	Standard Fee	Reduction	City Impact	Developer Portion	Credits/ Reimbursements	Due at Permit Issuance	Deferred to CO
Permit Fee	\$96,959	50%	\$48,479	\$48,479		\$48,479	
Plan Review Fee	\$63,023	0%	\$0.00	\$63,023		\$63,023 ^{>}	
Use Tax	\$375,000	0%	\$187,500	\$375,000	(\$187,500)* Reimbursement after construction	\$375,000	
Drainage Impact	\$583,200	0%	\$0.00	\$583,200			\$583,200
Water PIF Multi-Family (w/water rights)	\$1,738,704	45%	\$782,417	\$956,287	(\$153,703)** Credit applied to total due		\$799,117
Water PIF Irrigation (w/water rights)	\$97,900	45%	\$44,055	\$53,845			\$53,845
Meter Inventory	\$20,994	0%	\$0.00	\$19,846		\$20,994***	
Inspections	\$1,250	0%	\$0.00	\$1,200			\$1,250
Sewer Connection Fee	\$127,200	34%	\$43,248	\$83,952			\$83,952
Sewer PIF – MWWRD	\$950,400	0%	\$0.00	\$950,400		\$950,400	
Traffic Impact Fee	\$489,600	0%	\$0.00	\$489,600			\$489,600
Community Park	\$115,200	0%	\$0.00	\$115,200	(\$101,500****) Credit applied to total due		\$13,700
Neighborhood Park	\$397,440	0%	\$0.00	\$397,440	Reimburse cost of construction after constructed [#]	\$397,440	
Crossing Fee	\$201,600	0%	\$0.00	\$201,600			\$201,600

[>] Plan review fee shall be due prior to the issuance of the first building permit for the site, and shall be in the amount billed by plan review consultant plus 10% administrative fee and any in-house review at an hourly rate as adopted by the fee resolution in effect at the time of permit issuance. Amount shown herein is typical plan review fee based on project valuation and is not the correct amount that will be billed.

* Reimbursement provided upon completion and inspection of loop field installation for geothermal system

** Credit provided for excess water resource dedication

*** Calculation in table based on 12-2” Neptune Compound Meters and one 3” Neptune Turbine meter, subject to change

**** Credit for excess open space dedication

Pursuant to Section 5.3 of Sustainability Agreement, Elements @ Prairie Center Apartments Project

NOTE: Prairie Center Metropolitan District Impact Fees are not included in this table. District Credit PIF, Add-on PIF, and Facility Fees are due and payable directly to the district prior to and as a condition of issuance of the first building permit.