



# Procurement and Contract Cover Sheet

For Goods and Services

## PROJECT INFORMATION

Description: 120th Avenue Widening IGA

Department: City Manager

Division: Type Division Name

Contract/Project Manager: Jenna Hahn

Phone: (720) 402-8856

## SOLICITATION INFORMATION

Solicitation type:	IGA	Date Submitted for Approval:	11/21/2022
Must have City Attorney approval prior to formal solicitation.		Council Approval (+\$250k):	7/18/2022
		Resolution No.:	Type Number
Attach applicable selection form: Procurement Justification; Collaborative Purchasing Documentation; Quotes Documentation.			
Comments: Type additional information including description of goods/services to be procured.			

## CONTRACT/PROCUREMENT APPROVAL (Obtain after selection of vendor using required solicitation method.)

Contractor Name:	Buffalo Ridge Metropolitan District	Contract Term	Select Length
Type of contract:	Select Type	Renewals:	Select Renewal
Selected by 5% local preference:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Termination Date:	Select Date or Type None or Single Use
Dollar Amount (All Years):	\$ Type Dollar Amount or Rate	Renewal Increase:	Enter, if any.
Vendor verified with State (SOS)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Date:	Select date
		Federal funding? If yes, attach EPLS	<input type="checkbox"/> Yes <input type="checkbox"/> No
Verify funding available:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Date:	Select date
		Grant Funding?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Funding Source: (include account number, if available)			
Procurement Approval Required: Select Approval Level (Signature required prior to contract routing.)		Signature: _____	
Contract Signature Required: Select Signature Required (If contract required.)		Name: Type Name of Procurement Approver	

## Reviewers:

Vendor/Contractor: \_\_\_\_\_ Risk Manager: \_\_\_\_\_ City Attorney: \_\_\_\_\_  
(By Contract Admin) Initials/Date ☐ N/A Initials/Date Initials/Date

## Route contract in the following order for signature (as required):

- ☐ 1. Vendor / Contractor ☐ 3. City Attorney ☐ 5. City Clerk  
☐ 2. Department ☐ 4. City Manager/City Council ☐ 6. Return to: Type Name

## Additional Notes:

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF  
COMMERCE CITY AND THE BUFFALO RIDGE METROPOLITAN  
DISTRICT- 120TH AVENUE PROJECT**

and

**AMENDMENTS TO AGREEMENT FOR PUBLIC IMPROVEMENTS (VILLAGES AT  
BUFFALO RUN EAST, FILING NO. 7), AGREEMENT FOR PUBLIC  
IMPROVEMENTS (VILLAGES AT BUFFALO RUN EAST, FILING NO. 6), AND  
AGREEMENT FOR PUBLIC IMPROVEMENTS (VILLAGES AT BUFFALO RUN  
EAST, FILING NO. 3)**

This **INTERGOVERNMENTAL AGREEMENT** ("**Agreement**") is made and entered into this 17th day of October, 2022 ("**Effective Date**"), by and between BUFFALO RIDGE METROPOLITAN DISTRICT ("**Buffalo Ridge**"), a Colorado special district and the CITY OF COMMERCE CITY, a Colorado home rule municipality ("**City**") (collectively, "**Parties**").

**RECITALS**

A. Property within the boundaries of Buffalo Ridge exists along the current alignment of 120th Avenue from west of Chambers Road (commencing approximately at the east side of the highway overpass over I-76) to east of High Plains Parkway, as further depicted and set forth in Exhibit A, attached hereto and incorporated by this reference;

B. The Parties have determined it appropriate to work together to cause the installation and construction of public improvements necessary for expansion of 120th Avenue, consisting of a principal arterial cross section being built as further set forth in Exhibit B, attached hereto and incorporated by this reference, and including without limitation, undergrounding of existing overhead, relocation of an existing sanitary sewer line and drainage infrastructure for roadway improvements (the "**Project**");

C. The location of the installation and construction for the Project is located within a Right of Way that has been previously deeded or otherwise dedicated to the City and for which the City has responsibility for maintenance and repair.

D. The Parties desire to enter into this Agreement to establish terms for the payment of costs related to the Project and the Parties' respective cost allocation, as further set forth herein as well as the rights and responsibilities of the Parties with respect to the Project; and

E. Article XIV, Section 18 of the Colorado Constitution authorizes the City and Buffalo Ridge to enter into cooperative agreements such as this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the sufficiency of which is expressly acknowledged, the Parties agree as follows:

**1. Design and Permitting.**

a. Buffalo Ridge will undertake and complete the survey, engineering, design, plan preparation and permitting associated with the Project (the "Design Work"). Such Design Work may include without limitation, the following:

- (i) Title Commitments.
- (ii) Design and Utility Surveys;
- (iii) Property Surveys and Base Mapping preparation;
- (iv) Geotechnical Engineering;
- (v) Traffic Studies and Engineering;
- (vi) Environmental Engineering and Permitting;
- (vii) Roadway Design and Plans;
- (viii) Traffic Signal Design and Plans;
- (ix) Signage, Striping and Lighting Plans;
- (x) Drainage Design and Plans;
- (xi) Stormwater Management Design and Plans;
- (xii) Demolition and restoration of existing improvements design and plans;
- (xiii) Landscaping and Irrigation Design and Plans;
- (xiv) Electric Relocation Design and Plans;
- (xv) Gas Line Relocation Design and Plans;
- (xvi) Telecommunication Relocation Design and Plans;
- (xvii) Preparing Legal Descriptions for Easement and Right-of-Way Acquisition;
- (xviii) Drainage Studies and Stormwater Management Reports;
- (xix) Right-of-Way Plans; and
- (xx) Cost Estimates.

b. In its contract with a contractor for the Design Work, Buffalo Ridge shall include the following:

(i) Insurance requirements as are standard to Buffalo Ridge design contracts, and that specifically name the City and its elected and appointed officials, employees, and agents as "additional insured" (with the exception of workers' compensation and employer's liability insurance policies, if any);

(ii) Expressly naming the City as a third-party beneficiary of the contract with respect to Design Work relating to the Property Rights, as defined below, that the City is obligated to acquire pursuant to this Agreement;

(iii) Provisions for Buffalo Ridge's contractor to indemnify, defend, and hold harmless, the City and its elected and appointed officials, employees, and agents to the same extent as Buffalo Ridge and its directors, officers, agents and employees;

(iv) To expressly name the City as a third-party beneficiary of the contract with respect to the insurance, indemnity and defense, warranty, and standard of care provisions.

## **2. Construction Terms**

a. Buffalo Ridge shall commence construction of the Project upon City approval of the final plans and specifications, issuance of the final permits, and the acquisition of any and all necessary property rights and other property interests required for the construction of each portion of the Project. Such construction shall be completed substantially in accordance with all such City-approved plans and specifications.

b. The Parties each agree that in connection with real property under their respective control or ownership, if any, they will provide all necessary property interests, easements, licenses, and/or rights of ways deemed necessary for construction of the Project, at no cost to the other Party hereto. All requisite property interests as are necessary for construction of the Project shall be referred to herein as the "Property Rights." The City shall acquire, and/or obtain, at its cost, all the Property Rights on the both the north half and the south half of 120<sup>th</sup> Avenue. To be completed as soon as possible, but no later than such time as construction of the Project warrants acquisition of such Property Rights.

c. Buffalo Ridge has or will publicly bid the Project in accordance with its standard construction practices and all applicable legal requirements. Upon the Parties' determination of the lowest most qualified and responsive bidder in accordance with Colorado law, upon reasonable conferral of the Parties, based upon such bid results, Buffalo Ridge shall be authorized to enter into a construction contract with such contractor (the "District Contractor"), subject to the requirements of this Agreement, and to issue a notice to proceed. All executed construction documents shall be provided to the City for its records.

d. The Parties agree that the form of the construction contract shall be at Buffalo Ridge's discretion, subject to the City's review upon request, notwithstanding however, that the construction contract shall include the following terms:

(i) Insurance requirements as are standard to Buffalo Ridge construction projects, and specifically naming the City and its elected and appointed officials, employees, and agents as an "additional insured" (with the exception of workers' compensation and employer's liability insurance policies, if any). All references to Buffalo Ridge and its "directors, officers, employees and agents" with respect to any insurance shall also be made applicable to the City and its elected and appointed officials, employees, and agents, respectively. Buffalo Ridge shall require the District Contractor to provide copies of any and all certificates of insurance to the City;

(ii) Terms of payment and surety to include performance bonds and a minimum one-year warranty from Final Acceptance of all components of the Project;

(iii) Provision for the construction contractor to indemnify, defend, and hold harmless the City and its elected and appointed officials, employees, and agents to the same extent as Buffalo Ridge and its directors, officers, agents and employees (specifically, modifying General Condition 5.9 to name said parties); and

(iv) Expressly naming the City as a third-party beneficiary/obligee of the contract with respect to all provisions relating to the obligation to perform the work, insurance (including without limitation General Conditions 5.2, 5.3, 5.4, 5.6, 5.7, and 5.8), indemnity and defense (including without limitation General Conditions 5.9, 9.8, and 11.6), performance and payment bonds (including without limitation General Condition 5.1), and warranty provisions for any part of the work to be owned by or dedicated to the City.

e. Buffalo Ridge shall also be authorized to enter into construction management, quality assurance, and geotechnical engineering contracts with qualified contractors, subject to the requirements of this Agreement, and to issue a notice to proceed. Copies of all executed contracts shall be provided to the City for its records. In all such contracts, Buffalo Ridge shall include the following:

(i) Insurance requirements as are standard to Buffalo Ridge construction projects, specifically naming the City and its elected and appointed officials, employees, and agents as an "additional insured" (with the exception of workers' compensation and employer's liability insurance policies, if any). Buffalo Ridge shall require the District Contractor to provide a certificate or certificates of insurance to the City;

(ii) Provisions to indemnify, defend, and hold harmless the City and its elected and appointed officials, employees, and agents to the same extent as Buffalo Ridge and its directors, officers, agents and employees; and

(iii) To expressly name the City as a third-party beneficiary of the contract with respect to the insurance, indemnity and defense, warranty, and standard of care provisions.

f. Any property of the City damaged or destroyed by Buffalo Ridge or any of its contractors or subcontractors incident to this Agreement, excluding any property intended to be affected by the work, shall be promptly repaired or replaced by Buffalo Ridge to the City's satisfaction, or in lieu of such repair or replacement, Buffalo Ridge shall pay to the City money in an amount sufficient to compensate for the actual damages sustained by the City by reason of damage to or destruction of City property, including all costs associated with the repair or replacement of such property, plus an administrative fee of 10%.

### **3. Project Cost Allocation**

#### **a. Buffalo Ridge Cost Allocation**

(i) Buffalo Ridge has already invested approximately \$300,000 for design work on both the south and north half of the Project. In addition to such previously invested amount, Buffalo Ridge shall contribute an additional total of **\$4,100,000.000** ("Buffalo Ridge Contribution") for the Project. The Buffalo Ridge Contribution shall include the following costs to be paid by Buffalo Ridge:

(1) Any and all remaining Design Work occurring on the south half of 120th Avenue (the south half of 120th Avenue is further depicted in **Exhibit A**) (the "South Half"), as such Design Work is further defined in Paragraph 1;

(2) All project management costs associated with the South Half, including without limitation, construction management, administration and supervision;

(3) All landscaping installation on the South Half until the Buffalo Ridge Contribution is exhausted. In the event that any additional landscaping installation costs exceed Buffalo Ridge's Contribution, the City shall pay for such additional costs, upon reasonable conferral of the Parties as to the remaining costs; and

(4) All improvements located in the South Half from west of Chambers Road to east of High Plains Parkway, including: earthwork, erosion control, contractor mobilization, construction traffic control, roadway drainage, traffic signal improvements, dry utility relocation work including, without limitation, United Power, and soft costs including State permit fees; sales and use taxes as may be required, payment and performance bonds, construction surveying, materials testing, and construction management. In addition, Buffalo Ridge shall fund the roadway improvements including demolition, curb, gutter, concrete sidewalks, access roads, ramps, asphalt, striping, signage, streetlights, fence, subgrade reconditioning, non-potable waterlines that service the adjacent development, landscape and irrigation within the tree lawn

adjacent to the adjoining properties, SACWSD water and tap fees for the tree lawn adjacent to adjacent development, if any.

b. City Cost Allocation.

(i) The City shall contribute a total of **\$4,900,000.000** (the "**City Contribution**") for the Project. The City Contribution shall include the following costs paid by the City:

(1) All Design Work occurring or that has already occurred on the north half of 120th Avenue (the north half of 120th Avenue is further depicted in **Exhibit A**) (the "North Half"), as such Design Work is further defined in Paragraph 1 (and with respect to the Design Work that has already occurred and for which the District has already paid with respect to the north half, the District shall submit an invoice to the City upon execution of this Agreement, and the City shall pay such invoice in accordance with the terms of subparagraph e. of this paragraph 3);

(2) All Project management costs associated with the North Half, including without limitation, construction management, administration and supervision;

(3) All Project costs related to the portion of the Project occurring adjacent to the properties located in unincorporated Adams County

(4) All overhead electrical undergrounding along 120th Avenue. The Parties agree that the City will utilize its 1% Franchise Agreement funds with United Power to fund these costs;

(5) All Project costs associated with the relocation of the sanitary sewer line for wet utility work;

(6) All improvements occurring in the North Half consisting of the approved section of 120th Avenue from west of Chambers Road to east of High Plains Parkway, including: Earthwork, erosion control, contractor mobilization, construction traffic control, roadway drainage, traffic signal improvements, dry utility relocation work (outside of existing ROW) including, without limitation, United Power, and soft costs including State permit fees, sales and use taxes as may be required, payment and performance bonds, construction surveying, materials testing, and construction management. In addition, the City will fund the roadway improvements including demolition, curb, gutter, concrete sidewalks, access roads, ramps, asphalt, striping, signage, streetlights, fence, subgrade reconditioning, where appropriate as determined by the City, SACWSD water and tap fees for the associated with tree lawns, where necessary, for and property rights; and

(7) Costs for installation of native seeding occurring on the North Half.

c. The Project costs shall not exceed the respective cost allocations set forth as the Buffalo Ridge Contribution or City Contribution, unless this Agreement is amended upon mutual agreement.

d. For change orders exceeding \$5,000, upon reasonable conferral with the City and then upon receipt of written approval from the City as to an individual change order, Buffalo Ridge shall have the authority to approve such change orders. The City shall not withhold its written approval hereunder as long as (1) such change order does not exceed a 5% contingency allotted for costs identified in the respective bid schedules; and (2) such change order is consistent with all approved plans and specifications. The Parties agree that for any non-emergency change orders proposed related to the City's Contribution, exceeding \$5,000, Buffalo Ridge shall present the same to the City for review and consideration. The City shall have five (5) business days to consider non-emergency change orders and if no objection is made within the allotted time period, the same shall be deemed approved. In the event of an emergency change order, the City shall respond within twenty-four (24) hours of receipt of such change order request, with receipt being defined as the delivery to the City's Representative hereunder at the physical address and/or the e-mail address set forth below. If the City objects to such change order, the Parties shall meet and work in good faith to resolve the issue. An "emergency" shall involve events that impact immediate public safety concerns or other events of an emergent nature, such as water or gas line breaks.

e. Buffalo Ridge agrees to submit a detailed, itemized monthly statement to the City for review. The statement will show cost information for the South Half and the North Half, and make specific references to the work performed for the Project. The City agrees to reimburse Buffalo Ridge within sixty (60) days of receiving each invoice. The City may object to any errors related to an amount identified in the invoice and the Parties shall reasonably confer in an effort to resolve any such invoice objections. The Parties acknowledge that in order to avoid unnecessary delays and costs for the Project, each Party must make available personnel who are empowered to act and make decisions on behalf of such Party in an expeditious manner. For all matters to be determined by the City pursuant to this Agreement, and for all matters as shall be permissible pursuant to existing City procedures, the City shall designate a representative (the "City Representative"), who shall be available for immediate consultation on matters related to change orders, and any other matter to be determined by the City in connection with this Agreement. Unless subsequently notified otherwise, the name and contact information of the City Representative shall be:

City Representative: Mike McGoldrick, P.E.

Address: 8602 Rosemary Street Commerce City, CO 80022

Phone Number: 303-286-4846

Email: mmcgoldrick@c3gov.com

**4. Amendments to Existing Public Improvement Agreements.**

**a. July 12, 2016 Agreement for Public Improvements (Villages at Buffalo Run East, Filing No. 7).**

i. Northwood Village Associates, Ltd. entered into an Agreement for Public Improvements concerning Villages at Buffalo Run East, Filing No. 7 with



the City on July 12, 2016, attached hereto as Exhibit C (the "Filing 7 PIA") concerning the property known as Villages at Buffalo Run East, Filing No. 7, more specifically described in the legal description in Exhibit A, attached thereto. Buffalo Ridge is the successor in interest to Northwood Village Associates, Ltd. with regard to the Filing 7 PIA. Exhibit C attached thereto, required Buffalo Run (as successor in interest to Northwood Village Associates, Ltd.), to complete certain infrastructure improvements and share in the costs of certain improvements.

ii. The Parties hereby agree that as part of Buffalo Ridge's cost allocation for the Project, the Parties hereby deem the following infrastructure improvement obligations set forth in Exhibit C to the Filing 7 PIA to be fully released and waived and hereby amend the Filing 7 PIA by the deletion of Paragraphs 1, 2, 3, 4, 5, and 6 of Exhibit C.

iii. The Parties hereby amend Filing 7 PIA by the addition of the following language:

A. Owner shall construct and pave the concrete drive referenced herein using the same material used on other paved portions of the golf course. Owner's obligation in this regard is capped at a total cost to Owner of \$40,000.00

iv. The remainder of the Filing 7 PIA shall remain in full force and effect.

**b. March 23, 2016 Agreement for Public Improvements (Villages at Buffalo Run east, Filing No. 6).**

i. Buckley Associates, Ltd., entered into an Agreement for Public Improvements concerning Villages at Buffalo Run East, Filing 6 with the City on March 23, 2016, attached hereto as Exhibit D (the "Filing 6 PIA") concerning the property known as Villages at Buffalo Run East, Filing No. 6, more specifically described in the legal description in Exhibit A, attached thereto. Buffalo Ridge is the successor in interest to Buckley Associates, Ltd. with regard to the Filing 6 PIA. Paragraph 5 of Exhibit D attached thereto requires Buffalo Ridge (as successors in interest to Buckley Associates, Ltd.) to "reimburse the City for 50% of the reasonable costs of the materials and installation of a traffic signal located at 118<sup>th</sup> Avenue and High Plains Parkway."

ii. The Parties hereby agree that as part of Buffalo Ridge's cost allocation, the Parties hereby deem such payment contribution to be satisfied or otherwise fully released and waived and hereby amend the Filing 6 PIA by the deletion of Paragraph 5 of Exhibit D in its entirety. The remainder of the Filing 6 PIA shall remain in full force and effect.

**c. August 2, 2018 Agreement for Public Improvements (Villages at Buffalo Run East, Filing No. 3).**

i. 120<sup>th</sup> and Buckley Associates, Ltd., entered into an Agreement for Public Improvements concerning Villages at Buffalo Run East, Filing No. 3 with the City on August 2, 2018, attached hereto as Exhibit E (the "Filing 3 PIA") concerning the property known as Villages at Buffalo Run East, Filing No. 3, more specifically described in the legal description in Exhibit A, attached thereto. Buffalo Ridge is the successor in interest to 120<sup>th</sup> and Buckley Associates, Ltd. With regard to the Filing 3 PIA. Exhibit E attached thereto contains a requirement that Buffalo Ridge (as successor in interest to 120<sup>th</sup> and Buckley Associates, Ltd.), "pay three hundred thousand and five hundred dollars (\$305,500), which constitutes fifty percent of the cost of the traffic signal to be placed at 118<sup>th</sup> Ave. and High Plains Parkway, including costs for materials, design and installation."

ii. The Parties hereby agree to amend the third paragraph of Exhibit E to Filing 3 PIA, to read as follows:

The Owner shall pay three hundred five thousand and five hundred dollars (\$305,500), which constitutes fifty (50%) of the cost of the traffic signal to be placed at 118<sup>th</sup> Ave. and High Plains Parkway, including costs for materials, design and installation, at such time when the full build-out of High Plains Parkway occurs and the actual costs incurred for construction are submitted to and verified by the City.

The remainder of the Filing 3 PIA shall remain in full force and effect.

## 5. Certification of the Project and Final Payments.

a. After Initial Acceptance of the Project by the City and Buffalo Ridge from the construction contractor, Buffalo Ridge will provide written certification to the City ("**Certification**"), which will include an accounting of all costs related to construction of the Project, exclusive of the Design Work. The Certification shall include the final amount of the Parties' respective costs. The City may object to any errors related to amount identified in the Certification within thirty (30) days of the date of the Certification (the "**Reporting Period**"). The City shall reimburse Buffalo Ridge for any underpayment not later than sixty (60) days after the Reporting Period and if not paid within such time period, interest shall accrue on the City Reimbursement Amount at the rate of six percent (6.0%) per annum until paid in full to Buffalo Ridge. Buffalo Ridge shall return any overpayment to the City not later than sixty (60) days after the Reporting Period and if not paid within such time period, interest shall accrue at the rate of six percent (6.0%) per annum until paid in full to the City.

b. At any time, the City shall have the right to audit Buffalo Ridge's records concerning the design and construction of the Project. The right to request an audit of such records shall be made within three (3) years from the date upon which the Certification is provided and

shall be in writing. The audit request shall include a reasonably detailed description of the scope of documents requested for audit by the City.

**6. Operation and Maintenance of Project upon Completion.**

a. Upon Initial Acceptance, the Parties agree that maintenance of 120th Avenue shall be the responsibility of the City.

b. Operation and Maintenance of the tree, lawn, landscaping, and irrigation system along the north side of 120th Avenue adjacent to development shall be the responsibility of the City.

c. Operation and Maintenance of the tree, lawn, landscaping, and irrigation system along the south side of 120th Avenue adjacent to development shall be the responsibility of Buffalo Ridge and or its assigns or agents.

**7. City License to Buffalo Ridge for Construction.**

a. Pursuant to a license agreement to be executed prior to the commencement of construction, the City shall grant a temporary non-exclusive license to Buffalo Ridge and its contractors and subcontractors for the construction of the Project upon those portions of the Property Rights held by the City and where Buffalo Ridge may need access for the Project (the "**Temporary Construction License**"). All costs and expenses of activities conducted by Buffalo Ridge shall be at no cost to the City except as may otherwise be specifically provided in this Agreement and the non-exclusive license to access Buffalo Ridge. Subject to the provisions of this Agreement and the project cost allocations set forth in Paragraph 3, Buffalo Ridge shall be solely responsible for locating all overhead, above ground, and underground utilities, including without limitation, electrical, sewer, water, communication, and other utilities. The City is not under a duty to inspect for the precautions to avoid damage to, or injury from, such utilities. Buffalo Ridge agrees to be solely responsible for any such damage to or injury from, any such utilities on the licensed property which result from the activities conducted by or for Buffalo Ridge.

b. The City shall reserve all rights of ownership, use and occupancy of any licensed property subject only to the rights granted to Buffalo Ridge for the Temporary Construction License.

c. The term associated with such Temporary Construction License shall commence as of the date of this Agreement and terminate upon the earlier of (a) the date upon which Buffalo Ridge provides written notice of termination of the license to the City; (b) the date upon which the Parties mutually agree in writing to terminate the license; (c) the date upon which the City provides written notice of termination of the license for cause to Buffalo Ridge; or (d) the date upon which construction of the Project has been completed, as evidenced by a written notice of final acceptance to the contractor and the dedication of improvements to the City.

**8. Binding Effect; Assignment.** This Agreement shall be binding on the parties hereto and their respective successors and assigns, without regard to the method or manner of succession or assignment. Neither Party shall assign its obligations or rights under this Agreement without the other Party's prior written consent and any attempted assignment in violation hereof

shall be null and void. Any successor or assign of the whole, or of any part, of this Agreement will be jointly and severally liable for performance of such portion succeeded to or assigned.

**9. Representations and Warranties of Buffalo Ridge.**

a. Buffalo Ridge represents and warrants to the City that: (i) Buffalo Ridge is a special district duly organized and validly existing under the laws of the State of Colorado, is authorized to conduct business as it is presently being conducted, is not in violation of its governing documents or the laws of the State of Colorado, has the power and legal right to enter into this Agreement, and has duly authorized the execution, delivery, and performance of this Agreement;

(ii) The consummation of the transactions contemplated by this Agreement will not violate any provisions of its governing documents or constitute a default or result in the breach of any term of provision of any contract or agreement to which Buffalo Ridge is a party or by which it is bound; and

(iii) There is no litigation, proceeding, or investigation contesting the authority of Buffalo Ridge or its officers with respect to this Agreement, and Buffalo Ridge is unaware of any such litigation, proceeding, or investigation being threatened.

**10. Representations and Warranties of the City.**

a. The City represents and warrants to Buffalo Ridge that: (i) The City is a municipality duly organized and validly existing under the laws of the State of Colorado, is authorized to conduct business as it is presently being conducted, is not in violation of its governing documents or the laws of the State of Colorado, has the power and legal right to enter into this Agreement, and has duly authorized the execution, delivery, and performance of this Agreement;

(ii) The consummation of the transactions contemplated by this Agreement will not violate any provisions of its governing documents or constitute a default or result in the breach of any term of provision of any contract or agreement to which the City is a party or by which it is bound; and

(iii) There is no litigation, proceeding, or investigation contesting the authority of the City or its officers with respect to this Agreement, and the City is unaware of any such litigation, proceeding, or investigation being threatened.

**11. Term.** This Agreement will be effective from the Effective Date until the date the City Reimbursement Amount, or alternatively, any amount payable to the City by the District, as the case may be, pursuant to Section 3(b) and any interest has been paid. The termination of this Agreement shall not affect any warranty, indemnity, insurance, or bond obligations of Buffalo Ridge or any District Contractor or any related right accruing to the City's benefit.

**12. Notice.** Any notice given pursuant to this Agreement will be sent by certified mail, return receipt requested, overnight delivery service, or hand delivery to the address given above or to any other address given in writing by an addressee to the other party. Notice to the City shall be given to the City Manager and copied to the City Attorney. Such notice, if given by mail, shall be

deemed received three (3) days after mailing in accordance with this Section. Reports on the progress of the work and notifications of significant changes in the work may be sent by e-mail to addresses designated by the City.

### **13. General Provisions.**

a. **Incorporation by Reference.** The recitals to this Agreement and all exhibits to this Agreement are incorporated by reference.

b. **No Third-Party Beneficiaries.** The parties expressly intend that any person other than the City and Buffalo Ridge will be deemed to be only an incidental beneficiary under this Agreement.

c. **No Waiver.** No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, nor shall any such waiver be a continuing waiver. A party's failure to insist upon strict performance of any of the terms, covenants, conditions, or agreements contained in this Agreement shall not be deemed a waiver of any rights or remedies that said party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained in this Agreement by the same party. Except as expressly provided in this Agreement, no waiver shall be binding on any party unless executed in writing by the party making such waiver.

d. **Governmental Immunity.** No term or condition of this Agreement will be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

e. **Non-liability of Officials and Employees.** No elected or appointed official, employee, agent, consultant or contractor of the City or Buffalo Ridge shall be personally liable to the other Party or any successors or assign for any breach of this Agreement.

f. **Non-Appropriation.** Notwithstanding any other term or condition of this Agreement, all obligations of the City or Buffalo Ridge under this Agreement, including all or any part of any payment or reimbursement obligations, whether direct or contingent, will only extend to payment of monies duly and lawfully appropriated and encumbered for the purpose of this Agreement through the City's or Buffalo Ridge's legally required budgeting, authorization, and appropriation process, as applicable. Further, the City and Buffalo Ridge, by this Agreement, do not create a multiple fiscal year obligation or debt either within or without this Agreement. The City and Buffalo Ridge, by this Agreement, do not bind future legislatures to make such appropriations.

g. **Governing Law; Jurisdiction and Venue; Attorneys' Fees.** This Agreement will be governed by the laws of the State of Colorado. Venue for any litigation arising out of or relating to this Agreement will be in the 17th Judicial District in Adams County, Colorado. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall recover from the other party all costs and expenses

associated with such proceedings, including reasonable attorney's fees. The prevailing party in any litigation to resolve a dispute between the parties arising from this Agreement will be entitled to recover from the non-prevailing party court costs, reasonable third-party expenses, and reasonable attorney fees incurred in prosecuting or defending such action and enforcing any judgment, order, ruling or award. The prevailing party shall be determined based upon an assessment of which party's arguments or positions could fairly be said to have prevailed over the other party's arguments or positions on major disputed issues at trial. Such assessment should include evaluation of the following: the amount of the net recovery; the primary issues disputed by the parties; whether the amount of the award comprises a significant percentage of the amount sought by the claimant; and the most recent settlement positions of the parties, which the parties agree shall be admissible for purposes of determining the prevailing party. Any obligation of the City to pay court costs or attorney fees pursuant to this Section shall be subject to the appropriation of funds by the City Council for such purpose.

h. No Partnership or Agency – Independent Contractor Relationship. Notwithstanding any language in this Agreement or any representation or warranty to the contrary herein, the relationship between Buffalo Ridge and the City will be as independent contractors, and neither the City nor Buffalo Ridge will be deemed or constitute an employee, servant, agent, partner, or joint venture of the other.

i. Counterparts. This Agreement may be executed in several counterparts each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be executed via "wet" signature or electronic mark and executed copies hereof may be delivered using pdf or similar file type transmitted via electronic mail, cloud-based server, e-signature technology or other similar electronic means, and, upon receipt, shall be deemed originals and binding upon the signatories hereto.

j. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid, or unenforceable provision so that the resulting reformed provision is legal, valid, and enforceable.

k. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the City or Buffalo Ridge on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender. Section headings used in this Agreement are for convenience of reference only.

l. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement on behalf of the parties and to bind the parties to its terms.

m. Acknowledgement of Open Records Act – Public Document. The Parties hereby acknowledge that the City and Buffalo Ridge are public entities subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et seq., and as such, this Agreement may be subject to public disclosure thereunder.

n. Nothing in this Agreement shall be construed to be a waiver by the City of its police power or its legislative authority to make decisions regarding the exercise of its eminent domain authority. Nothing in this Agreement shall bind the City or Buffalo Ridge to exercise their respective powers of eminent domain, or to in any other manner be precluded from making a legislative determination regarding how their respective eminent domain authority is exercised.

IN WITNESS WHEREOF, the City and Buffalo Ridge execute this Agreement as of the Effective Date.

**CITY OF COMMERCE CITY**

DocuSigned by:  
Jason Rogers  
A1672F2B83F4CD  
Jason R Rogers, Acting City Manager

ATTEST:

DocuSigned by:  
Dylan Gibson  
798CD14F8571481...  
Dylan A. Gibson, City Clerk



APPROVED AS TO FORM:

DocuSigned by:  
Matthew R. Hader  
8B63458F4A2C450  
Matthew R. Hader, Interim City Attorney

**BUFFALO RIDGE METROPOLITAN DISTRICT**

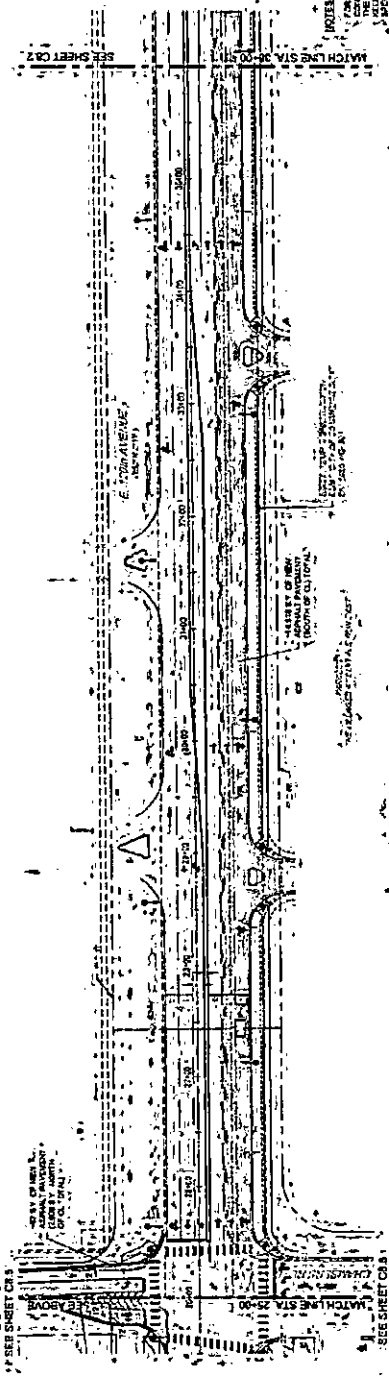
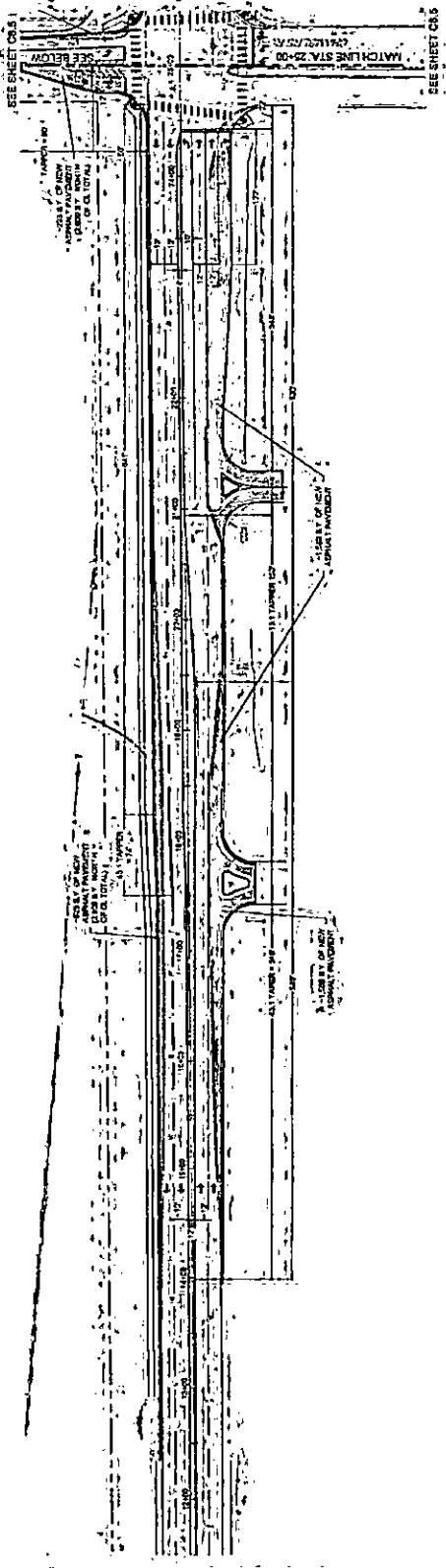
DocuSigned by:  
Michaela Smith  
ZDFAS1626DCD418...  
Signature

Printed Name: Michaela Smith

Title: President

ATTEST:  
DocuSigned by:  
Russell N. Watterson, Jr.  
A4950EFFDC0C4D4  
Title: Assistant Secretary/Treasurer



[illegible][illegible]

1. DRAWING NO. 2. SHEET NO. OF TOTAL SHEETS	3. PROJECT NO. 4. PROJECT NAME	5. PROJECT LOCATION 6. PROJECT CITY	7. PROJECT STATE 8. PROJECT ZIP	9. PROJECT DATE 10. PROJECT TIME	11. PROJECT DRAWN BY 12. PROJECT CHECKED BY	13. PROJECT SCALE 14. PROJECT UNIT	15. PROJECT SHEET NO. 16. PROJECT TOTAL SHEETS	17. PROJECT CLIENT NAME 18. PROJECT CLIENT ADDRESS 19. PROJECT CLIENT CITY 20. PROJECT CLIENT STATE 21. PROJECT CLIENT ZIP	22. PROJECT ARCHITECT NAME 23. PROJECT ARCHITECT ADDRESS 24. PROJECT ARCHITECT CITY 25. PROJECT ARCHITECT STATE 26. PROJECT ARCHITECT ZIP	27. PROJECT ENGINEER NAME 28. PROJECT ENGINEER ADDRESS 29. PROJECT ENGINEER CITY 30. PROJECT ENGINEER STATE 31. PROJECT ENGINEER ZIP	32. PROJECT DESIGNER NAME 33. PROJECT DESIGNER ADDRESS 34. PROJECT DESIGNER CITY 35. PROJECT DESIGNER STATE 36. PROJECT DESIGNER ZIP	37. PROJECT CONSULTANT NAME 38. PROJECT CONSULTANT ADDRESS 39. PROJECT CONSULTANT CITY 40. PROJECT CONSULTANT STATE 41. PROJECT CONSULTANT ZIP	42. 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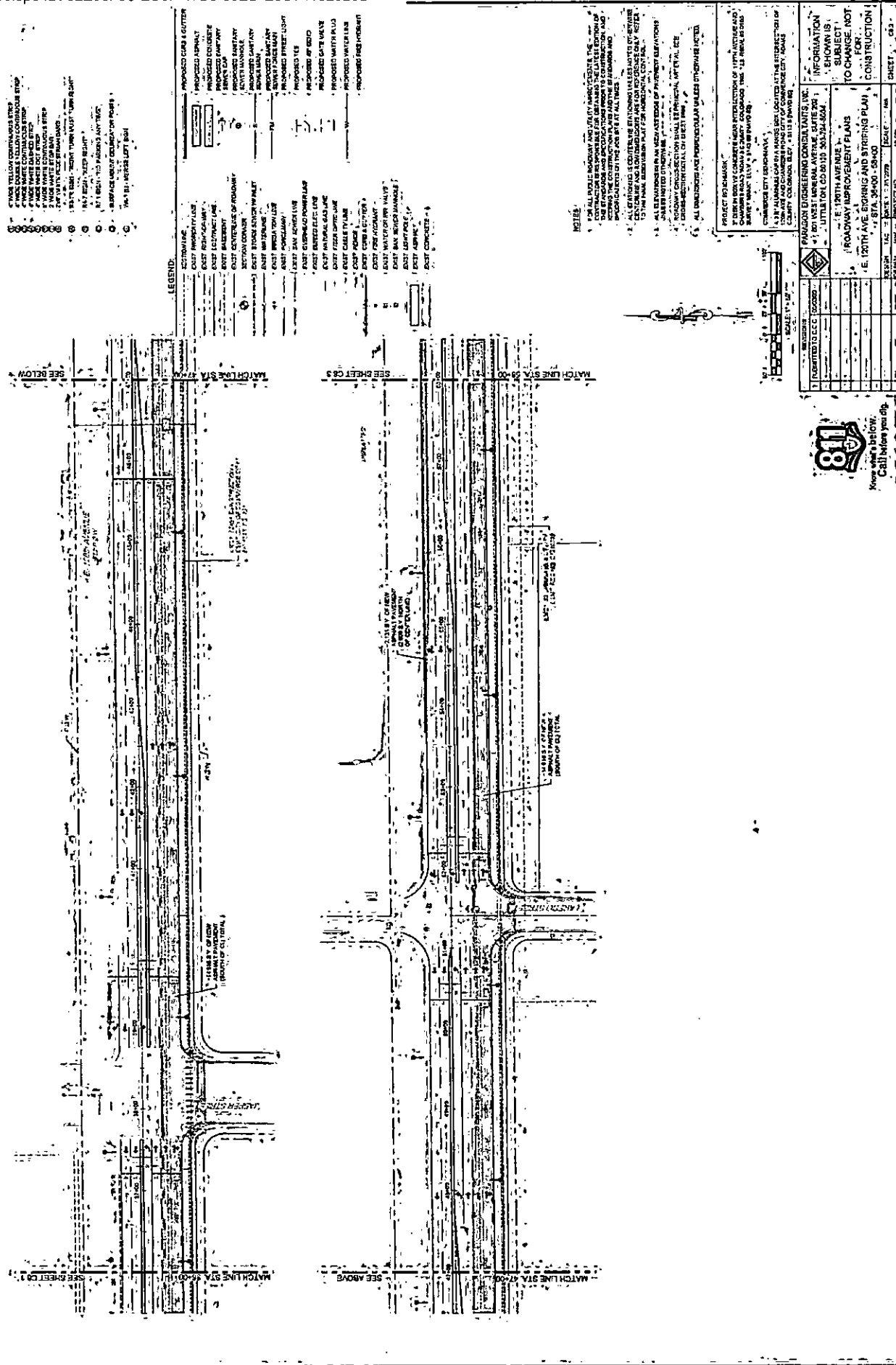


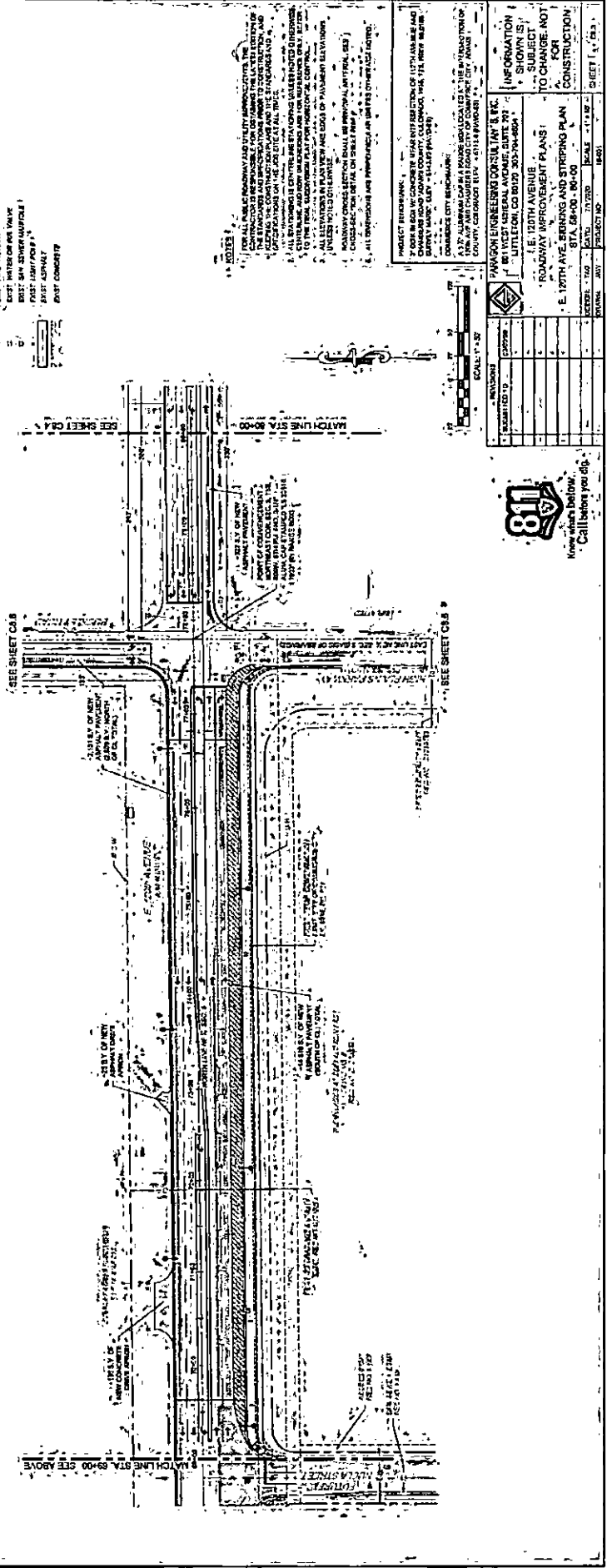
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Call before you dig.

LEGEND:

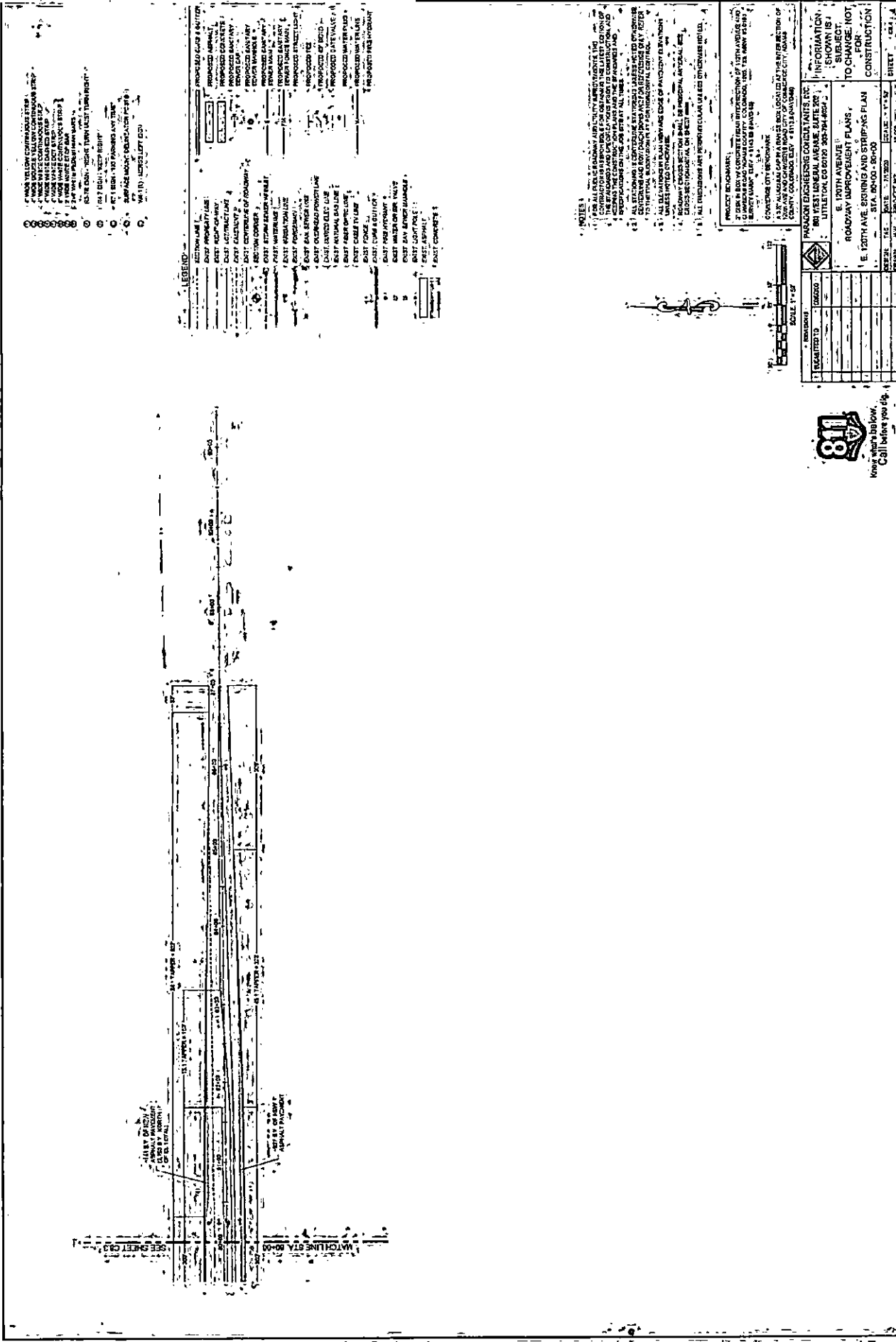
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1. BEST PRACTICES  
 2. BEST AVAILABLE TECHNOLOGICAL METHODS  
 3. BEST AVAILABLE MANAGEMENT PRACTICES  
 4. BEST AVAILABLE MONITORING  
 5. BEST AVAILABLE DATA  
 6. BEST AVAILABLE INFORMATION









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## NOTES 4

- [illegible]

## PROJECT BENCHMARK:

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CON ENGINEERING CO.

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**EXHIBIT C****July 12, 2016 Agreement for Public Improvements (Villages at Buffalo Run East, Filing No. 7)  
AGREEMENT FOR PUBLIC IMPROVEMENTS****(Villages at Buffalo Run East, Filing No. 7)**

THIS AGREEMENT FOR PUBLIC IMPROVEMENTS (the "Agreement") is made and entered into effective this 12<sup>th</sup> day of July, 2016 (the "Effective Date") by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60<sup>th</sup> Avenue, Commerce City, CO 80022 (the "City"), and NORTHWOOD VILLAGE ASSOCIATES, LTD., a Colorado limited partnership whose address is 905 W. 124<sup>th</sup> Avenue, Suite 210, Westminster, CO 80234 (hereinafter, "Owner").

WHEREAS, Owner owns certain real property within the City generally located at a part of Section 5, Township 2 South, Range 66 West, of the 6<sup>th</sup> P.M., City of Commerce City, County of Adams, State of Colorado, and more specifically described in Exhibit A attached hereto and incorporated herein by this reference, also known as Villages at Buffalo Run East, Filing No. 7 (the "Property");

WHEREAS, Owner intends to subdivide and/or develop the Property, the effect of which will directly impact and generate the need for on-site and off-site improvements;

WHEREAS, the City has enacted a Land Development Code (the "LDC") that, as a result of the subdivision and/or development, requires certain public improvements to be installed and/or constructed on or adjacent to the Property; and

WHEREAS, Owner acknowledges that the improvements required herein are reasonably attributable to the special impacts that will be generated by the proposed uses of the Property and that the terms and conditions set forth in this Agreement are reasonable, necessary and appropriate.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

**I. IMPROVEMENTS REQUIRED.**

A. Owner shall provide the improvements or other performance requirements as set forth in Exhibits B and C (collectively, the "Improvements") as follows:

1. Exhibit B, attached hereto and incorporated herein by this reference, contains all required infrastructure improvements related to public roadways and storm sewers (the "Infrastructure Improvements").
2. Exhibit C, attached hereto and incorporated herein by this reference, contains all required landscape improvements for principal and minor arterial roadways, major and minor collector roadways and all private park, trail and open space areas (the "Landscape Improvements").
3. Exhibits B and C include a description of Improvements and schedules of the estimated costs of Improvements to be accepted by the City. In the event construction of Infrastructure Improvements and/or installation of Landscape Improvements have not begun within one (1) year of the Effective Date, Owner shall submit to the City not later than ninety (90) days prior to commencement of construction or installation, as applicable, revised Exhibits B and/or C, as appropriate, providing then-current schedules of estimated costs for the applicable Improvements.
4. Exhibits B and C are provided for surety estimates only and shall not be used to establish construction standards or specifications. In the event of a conflict between Exhibit B or

- Exhibit C and the construction or landscape plans approved by the City, the approved plans shall govern.
- B. Owner shall, at its sole expense, design, construct and install the Improvements for initial acceptance as provided in Section IV herein ("Initial Acceptance") and shall repair the Improvements as necessary until final acceptance by the City as provided in Section V herein ("Final Acceptance").
- C. Construction and landscape plans must be approved by the City prior to commencement of construction of Infrastructure Improvements or installation of Landscape Improvements.

## II. SECURITY FOR CONSTRUCTION/INSTALLATION OF IMPROVEMENTS

### A. Security for Construction of Infrastructure Improvements:

1. Prior to commencing construction of the Infrastructure Improvements, Owner shall provide to the City cash-in-lieu, an irrevocable letter of credit or a performance surety bond payable to the City equal to one hundred fifteen percent (115%) of the estimated cost of the Infrastructure Improvements (the "Infrastructure Security"). A bond or letter of credit shall be valid until Initial Acceptance of the Infrastructure Improvements. Any bond or letter of credit shall meet the requirements for bonds or letters of credit set forth in subsections III(D)(1-2).
2. Upon issuance of the letter of Initial Acceptance described in Section IV(A), the City shall release the Infrastructure Security so long as all releases of mechanic's lien have been filed with respect to the project and an acceptable warranty performance guarantee as provided in Section III has been executed and delivered to the City.
3. Owner Default:
  - a. In the event Owner fails to obtain Initial Acceptance within eighteen (18) months from the commencement of construction, subject to extension at the City's sole discretion, the City may retain the Infrastructure Security and apply such funds to completion of the Infrastructure Improvements.
  - b. The City agrees to refund any portion of the Infrastructure Security not applied to completion of the Infrastructure Improvements.
  - c. The method and manner in which the City elects to construct or install the Infrastructure Improvements shall be at the sole discretion of the City, provided, however, that nothing herein shall obligate the City to install or complete the Infrastructure Improvements and nothing herein shall prevent, prohibit or limit the remedies available to the City to enforce the obligations of this Agreement.

### B. Security for Installation of Landscape Improvements:

1. In the event Owner is unable to complete the Landscape Improvements prior to Initial Acceptance of the Infrastructure Improvements due to periods of adverse weather or similar reasons approved by the City, Owner shall provide to the City cash-in-lieu, an irrevocable letter of credit or a performance surety bond payable to the City equal to one hundred twenty-five percent (125%) of the estimated cost of the uncompleted Landscape Improvements (the "Landscape Security"). Any irrevocable letter of credit or performance surety bond provided



- by Developer shall be valid until Initial Acceptance of the Landscape Improvements. Any bond or letter of credit shall meet the requirements set forth in subsections III(D)(1-2).
2. Except as provided in subsection (B)(4) herein, the City shall release the Landscape Security only upon completion and City acceptance of all Landscape Improvements so long as all releases of mechanic's lien have been filed with respect to the Landscape Improvements and an acceptable warranty performance guarantee as provided in Section III has been executed and delivered to the City.
  3. If delayed as provided for in subsection B(1) herein, Owner shall complete the Landscape Improvements not later than eight (8) months from the date of written request by the City.
  4. **Owner Default**
    - a. In the event Owner fails to complete the Landscape Improvements within eight (8) months from the date of the City's written request, the City may retain the Landscape Security and apply such funds to completion of the Landscape Improvements.
    - b. The City agrees to refund any portion of the Landscape Security not applied to completion of the Landscape Improvements.
    - c. The method and manner in which the City elects to install the Landscape Improvements shall be at the sole discretion of the City; provided, however, that nothing herein shall obligate the City to install or complete the Landscape Improvements and nothing herein shall prevent, prohibit or limit the remedies available to the City to enforce the obligations of this Agreement.
  5. Regardless of the provisions of this Section II(B), the City shall not be responsible for maintaining the Landscape Improvements within the right-of-way of any arterial or collector roadways. The City shall maintain medians within principal and minor arterials to the extent landscaping has been installed by the City. Individual lot owners shall be required to maintain tree lawn areas as approved and installed along local roadways.

### **III. WARRANTY**

- A. Owner hereby warrants all Improvements to be free from defects, including but not limited to, defects of materials, workmanship and design and that the Improvements otherwise fully comply with all applicable City standards and specifications in effect on the date of this Agreement.
- B. Prior to Initial Acceptance of the Infrastructure Improvements, Owner shall execute and deliver to the City a warranty performance guarantee equal to fifteen percent (15%) of the total estimated cost of the Infrastructure Improvements (the "Infrastructure Warranty").
- C. Prior to Initial Acceptance of the Landscape Improvements, Developer shall execute and deliver to the City a warranty performance guarantee equal to twenty-five percent (25%) of the total cost of Landscape Improvements to include all vegetative materials, irrigation and recreation facilities (the "Landscape Warranty"). Developer shall execute the Landscape Warranty as herein provided without regard to which party completed the Landscape Improvements.
- D. The Infrastructure Warranty and the Landscape Warranty (together, the "Warranties") shall each be in the form of an irrevocable letter of credit, warranty bond or cash escrow and shall provide security for costs that may be incurred in repairing or replacing the respective Improvements for eighteen (18) months from the date of issuance of the Initial Acceptance (the "Warranty Period").

1. Any entity issuing a bond shall have at least an "A" rating from Moody's; or an equivalent rating as designated by a nationally recognized ratings firm, and shall be included in the most recent listing of companies holding Certificates of Authority as Acceptable sureties on Federal Bonds and as Acceptable Reinsuring Companies, Department of Treasury, Circular 570.
  2. Letters of credit shall be in a form acceptable to the City and shall be drawn on a local Colorado institution acceptable to the City.
- E. In the event any substantial repair or replacement is required to any of the Improvements during the Warranty Period and such repair or replacement is not timely made upon notice of defect, or in any event before the expiration of the Warranty Period, the City may elect to:
1. Extend the Warranty Period for up to an additional one (1) year after acceptance of the completed repair or replacement and require the Owner to extend the term of the appropriate Warranty;
  2. Call the appropriate Warranty and secure repair or replacement of the non-conforming Improvements; and/or
  3. Order denial or suspension of outstanding building permits or Certificates of Occupancy until repair or replacement of the non-conforming Improvements has been performed and Initial Acceptance thereof has been granted by the City.

#### IV. INITIAL ACCEPTANCE

##### A. Initial Acceptance of Infrastructure Improvements.

1. In order to obtain Initial Acceptance of Infrastructure Improvements for a phase or an entire project, Owner shall submit to the City a written request for Initial Acceptance of Infrastructure Improvements and one (1) copy of record drawings.
2. Within ten (10) business days of receipt of a request for Initial Acceptance, the City shall review the record drawings and shall either approve the drawings or return the drawings to the Owner with comments.
  - a. In the event the record drawings are returned to Owner with comments, Owner shall submit to the City the "as built" drawings revised in accord with the City's comments.
  - b. Once the record drawings are approved, Owner shall submit to the City "certified as built" drawings on Mylar and electronic AutoCAD files.
3. Within ten (10) business days of receipt of a request for Initial Acceptance of Infrastructure Improvements, the City shall inspect the Infrastructure Improvements.
  - a. During or subsequent to inspection of the Infrastructure Improvements, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City.
  - b. In the event Owner fails to correct, repair or replace the punch list items within thirty (30) days of the date of the punch list, the City shall not grant Initial Acceptance, but shall instead conduct a subsequent inspection of the Infrastructure Improvements and

generate a new written punch list. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City.

- c. In no event shall the City grant Initial Acceptance of Infrastructure Improvements until after Developer has corrected, repaired and replaced the punch list items to the City's satisfaction.

4. Upon a finding of satisfactory completion of the Infrastructure Improvements in compliance herewith and with all applicable ordinances and standards of the City, and upon execution and delivery to the City of the Infrastructure Warranty, the City shall grant Initial Acceptance of the Infrastructure Improvements via certified letter to Owner, the date of which shall constitute the date of commencement of the Warranty Period for the Infrastructure Improvements as identified in Section III(D).
5. Building permits may be issued prior to Initial Acceptance for the phase for which the Infrastructure Security has issued provided that all required fire hydrants, water for fire suppression, curb and gutter have been constructed to City specifications and paved emergency access to the lots on which building permits are requested are satisfactory as determined by the City. Certificates of Occupancy shall not be issued prior to Initial Acceptance of Infrastructure Improvements.

**B. Initial Acceptance of Landscape Improvements.**

1. In order to obtain Initial Acceptance of Landscape Improvements for a phase or an entire project, Owner shall submit to the City a written request for Initial Acceptance of Landscape Improvements.
2. The City shall inspect the Landscape Improvements within a reasonable time after receipt of a request for Initial Acceptance.
  - a. During or subsequent to such inspection, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City:
    - i. Not less than thirty (30) days after the date the punch list is provided to Owner, unless Owner authorizes an earlier inspection, the City shall conduct a re-inspection of the Improvements and generate a new written punch list unless all punch list items have been corrected, repaired or replaced to the satisfaction of the City.
    - ii. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City, at which time, the City shall proceed with Initial Acceptance as set forth herein.
  - b. Failure to correct, repair or replace the punch list items as provided herein shall constitute cause to deny any request for Initial Acceptance, and in no event shall the City grant Initial Acceptance until after Owner has corrected, repaired and replaced the punch list items to the City's satisfaction.
3. Upon a finding of satisfactory completion of the Landscape Improvements in compliance herewith and with all applicable ordinances and standards of the City, and upon execution and delivery to the City of the Landscape Warranty, the City shall grant Initial Acceptance of the Landscape Improvements via certified letter to Owner, the date of which shall constitute

the date of commencement of the Warranty Period for the Landscape Improvements as provided in Section III(D).

## V. FINAL ACCEPTANCE

### A. Timing for Final Acceptance

1. Owner shall obtain Final Acceptance of the Infrastructure Improvements, as provided herein, prior to the expiration of the applicable Warranty Period.
2. Owner shall obtain Final Acceptance of the Landscape Improvements, as provided herein, prior to the expiration of the applicable Warranty Period.

### B. Procedure for Final Acceptance. Not earlier than sixty (60) days or later than forty-five (45) days prior to the date of expiration of a Warranty Period, Owner shall submit a written request for Final Acceptance of the related Improvements.

1. Within a reasonable time after Owner's request for Final Acceptance, the City shall conduct a final inspection of the appropriate Improvements (either Landscape or Infrastructure) or authorized phase thereof.
  - a. During or subsequent to such inspection, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City. Failure to correct, repair or replace the punch list items as provided herein shall constitute cause to deny any request for Final Acceptance.
    - i. Not less than thirty (30) days after the date the punch list is provided to Owner, unless Owner authorizes an earlier inspection, the City shall conduct a re-inspection of the Improvements and generate a new written punch list unless all punch list items have been corrected, repaired or replaced to the satisfaction of the City.
    - ii. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City, at which time, the City shall proceed with Final Acceptance as set forth herein.
  - b. If the subdivision and/or development of the Property involves a land dedication to the City for a future park or school site, floodplain or open space (the "Dedicated Area(s)"), the City shall inspect such Dedicated Area(s). In the event any damage or dumping has occurred in, on or to any Dedicated Area, Owner shall be responsible for the restoration thereof. Despite the issuance of a Letter of Final Acceptance pursuant to this Section V, if any, the City shall not release the Landscape Warranty unless Owner has restored the Dedicated Area(s) to the City's satisfaction. Nothing herein shall be construed or deemed as requiring the City to release the Landscape Warranty prior to Final Acceptance of the Landscape Improvements.
2. Owner shall certify to the City that all persons and entities having provided labor and/or services in the construction or installation of the Improvements for which Final Acceptance is being sought have been fully paid subject to such exceptions as may be disclosed to the City and that are acceptable to the City.

3. If the Improvements subject to the inspection request fully conform to this Agreement and the City's applicable standards and specifications, and/or all corrections, repairs or replacements have been made to bring the Improvements into conformance, the City shall issue to Developer, via certified mail, a Letter of Completion and Final Acceptance.
  4. Subject to the provisions of subsection (1)(b) of this Section V(B), the City shall release the Warranty only after Final Acceptance of the Improvements related thereto.
- C. In the event Owner does not request Final Acceptance of Improvements forty-five (45) days prior to the expiration of the Warranty Period related thereto, or as extended by the City, the City shall have the right at any time thereafter to conduct a final inspection of the Improvements.
- D. If, pursuant to final inspection requested by the Owner or initiated by the City, including inspection of Dedicated Area(s), any Improvements or Dedicated Area(s) are found not to conform to the requirements of this Agreement or applicable City standards and specifications, the City may exercise any and all rights set forth in Section XV.
- E. Owner's failure to obtain Final Acceptance of Improvements prior to expiration of the Warranty Period related thereto shall constitute a Default under this Agreement, and the City may exercise its rights to secure performance as provided in Section XV.
- F. Nothing herein shall be construed or deemed as requiring the City to finally accept or release from Warranty any Improvements that are defective or damaged.

## VI. PHASING

Phasing of the Improvements shall be permitted subject to the terms and conditions of this Agreement and as described and depicted on Exhibit D, attached hereto and incorporated herein by this reference. Owner, at its discretion, may modify the sequence of phase construction if approved administratively by the City. It is contemplated that the one or more phases of construction of Improvements for the Property may be performed by the Buffalo Ridge Metropolitan District and/or a Homebuilder or Homebuilders pursuant to a partial assignment and assumption of this Agreement.

## VII. DEVELOPMENT STANDARDS AND PROCEDURES

- A. Engineering and Landscaping Services. Owner shall procure at its sole expense all professional services, including all engineering, surveying and landscaping services, necessary and appropriate for development of the Property, which services shall fully conform to the City's applicable ordinances, standards and specifications.
1. All professional services shall be performed by engineers, surveyors, architects or other professionals duly licensed, accredited and/or certified in accordance with applicable state and local law.
  2. Landscaping services shall be performed by persons trained in landscape architecture or horticultural design.
- B. Plan Review. All applicable plans must be reviewed and approved by the City prior to construction or installation. No construction or installation of Improvements shall occur without prior plan approval.

- C. Right-of-Way Permits: Prior to commencing construction of the Improvements, Owner shall obtain all permits required under Chapter 10 of the Commerce City Revised Municipal Code, pay all fees related thereto and pay any associated City use taxes, if required.
- D. Testing: Owner shall employ at its sole expense a professional qualified, independent testing company to perform all testing of materials or construction that may reasonably be required by the City to ensure compliance with City standards and specifications. Owner shall furnish to the City certified copies of test results and shall release and authorize full access to the City and its designated representatives all work-up materials, procedures and documents used in preparing test results.
- E. Inspection: During construction or installation of the Improvements and until Final Acceptance thereof, Owner shall request and coordinate with the City all inspections of the Improvements. If the required inspections are not conducted, the City shall have the right to require Owner to remove and replace the Improvements. Owner shall reasonably cooperate and assist the City to gain access to the areas designated for inspection. Owner shall also notify the City upon discovery of any non-conformance with the approved plans, standards and specifications for the Improvements. Inspection and acceptance by the City of any Improvements shall not relieve Owner of any responsibilities under this Agreement.
- F. Erosion Control: All work associated with the installation or construction of Improvements shall conform to the City's requirements for erosion control and the approved erosion and sediment control drawings associated with the Property.
  - 1. Owner shall, at its own expense, keep on-site and adjacent streets and rights-of-way used as construction routes clean of mud, rocks and debris at all times during construction.
  - 2. Within twenty-four (24) hours of verbal notification by the City of non-compliance with this subsection F, Owner shall commence clean-up operations and diligently pursue completion of such clean-up operations to the satisfaction of the City.
  - 3. If Owner fails to respond within 24 hours, the City is unable to contact Owner after reasonable effort, or Owner fails to diligently pursue clean-up operations to the satisfaction of the City, the City may take corrective action to clear the affected streets and rights-of-way and invoice Owner at the City's prevailing rate for which Developer shall be liable for prompt payment.

#### VIII. OBLIGATIONS OF SUBSEQUENT MORTGAGEE OR LIEN HOLDER

Any subsequent mortgagees or lien holders shall subordinate their interests in the Property to the rights and remedies of the City for purposes of this Agreement. No subsequent mortgagee or lienholder is obligated to complete any of the Improvements unless such subsequent mortgagee or lienholder becomes a successor owner and continues development of the Property by requesting permits, certificates or other approvals from the City. In such event, the Improvements shall be completed pursuant to the terms and conditions of this Agreement.

#### IX. CONTRACTORS AND SUPPLIERS - LICENSING; PAYMENT - REMOVAL OF LIENS

- A. Owner shall ensure that all contractors and/or subcontractors employed by Owner are licensed as required by state and local law before any work on the Improvements is commenced.
- B. Owner shall at all times promptly make payments of all amounts due to persons supplying labor, materials or services in connection with the Improvements and to any persons who may otherwise

be entitled to assert a lien upon the Property by virtue of C.R.S. § 38-22-102, *et seq.* Owner shall indemnify and defend the City with respect to any such lien and, regardless of the merits of the lien, shall immediately take any and all steps necessary to remove the lien from the Property.

#### **X. NON-LIABILITY**

Owner acknowledges that the City's review and approval of plans for the development of the Property are done in furtherance of the general public health, safety and welfare and that no specific relationship with, or duty of care to, Owner or third parties is assumed by such review approval or immunity waived as is more specifically set forth in Colorado Governmental Immunity Act, C.R.S. § 24-10-106.5.

#### **XI. INDEMNIFICATION**

Owner shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations or omissions of Owner or its employees, agents, representatives or other persons acting under Owner's direction or control in performing or failing to perform the work to be performed under this Agreement. Owner shall indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the actions or omissions of Owner and/or its employees, agents or representatives or other persons acting under Owner's direction or control. The provisions set forth in this Section shall survive the completion of the Improvements and the satisfaction, expiration or termination of this Agreement. The obligations of this Section XI shall not apply to the extent the City becomes liable by final judgment to pay a third party as the result of the negligent act or omission, error, professional error, mistake, accident or other fault of the City.

#### **XII. INSURANCE**

- A. Coverages. Prior to beginning any work whatsoever under this Agreement including preparatory work such as surveying, staking or clearing the Property, Owner shall, at no cost to the City, procure the following coverages and maintain such coverages until all Improvements have been finally accepted:
1. Commercial General or Business Liability coverage insuring against liability for personal injury, bodily injury or death arising out of the performance of Owner's obligations under this Agreement with minimum combined single limits of One Million Dollars (\$1,000,000.00) for each occurrence and One Million Dollars (\$1,000,000.00) general aggregate.
  2. Products/Completed Operations coverage insuring against any liability for bodily injury or property damage caused by the completed Improvements with a combined single limit of at least One Million Dollars (\$1,000,000.00).
  3. Automobile Liability coverage with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) for any one occurrence with respect to each of Owner's owned, hired or non-owned vehicles assigned to or used in connection with the performance of Owner's obligations under this Agreement. In the event Owner's insurance does not cover non-owned vehicles, the requirements of this paragraph shall be met by each employee of Owner who uses a vehicle in connection with this Agreement, and Owner agrees to assure compliance by each employee prior to allowing use of a vehicle not owned by Owner.

4. Workers' Compensation Insurance as required by Colorado state statute and any other insurance required by applicable law.
- B. Self-Insurance. Evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages if first approved by the City in its sole discretion.
- C. Requirements. Owner shall at a minimum procure and maintain the insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Owner pursuant to retroactive dates. Coverage for extended reporting periods shall be procured to maintain such continuous coverage.
- D. Certificates of Insurance and Endorsements.
  1. One or more Certificates of Insurance ("Certificates") shall be completed by Owner's insurance agent(s) as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, which Certificates shall be subject to review and approval by the City prior to commencement of any work under this Agreement.
  2. In the event any of the Improvements are to be constructed or installed on or within City right-of-way or other City-owned property, each insurance policy required herein, except Workers' compensation coverage, shall name the City as additional insured, and Owner shall furnish to the City all necessary endorsements evidencing the insurance coverages required by this Agreement.
  3. Completed Certificates shall be sent to:  
  
Risk Manager  
City of Commerce City Human Resources Department  
7887 E. 60<sup>th</sup> Ave.  
Commerce City, CO 80022  
  
City Engineer  
City of Commerce City Public Works Department  
8602 Rosemary Street  
Commerce City, CO 80022
  4. The City shall review the Certificates and endorsements as soon as practical, typically within ten (10) working days of receipt. The Certificates shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.
  5. In the event the period of coverage for any insurance required herein expires prior to the conclusion of Owner's obligations hereunder, Owner shall, not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the City with a new certificate of insurance and endorsements evidencing new or continuing coverage in accordance with the requirements of this Agreement.
- E. Failure to Obtain Insurance Constitutes Breach. Owner's failure to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a breach of this Agreement and, if said breach is not cured within ten (10) days of written notice by the City to Owner, the City may immediately terminate this Agreement, or at its discretion, the City may



procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Owner to the City upon demand, or the City may offset the cost of the premiums against any monies due to Owner from the City, regardless of the source or location of such funds.

- F. Certified Copies. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Owner agrees to execute any and all documents necessary to allow the City access to any and all insurance policies and endorsements pertaining to this Agreement.
- G. Subcontracts. Owner shall include the insurance requirements set forth in this Agreement in all contracts and subcontracts entered into for the construction or installation of the Improvements. Owner shall be responsible for the failure of any such contractor or subcontractor to procure and maintain insurance meeting the requirements set forth in this Agreement. The City reserves the right to approve variations in the insurance requirements applicable to such contractors or subcontractors upon joint written request of the contractor or subcontractor and Owner if, in the City's discretion, such variations do not substantially affect the City's interests.

### XIII. FEES, CHARGES AND DEDICATIONS

Fees, charges and dedications shall be assessed pursuant to Article IX of the LDC or as amended by City Council. The fees associated with the Property are outlined as follows:

- A. Public Parks and Recreation Fees. Owner shall not be liable for any cash payment or land dedication or a combination thereof for public parks, trails and recreation facilities in connection with the Property, which have all been previously satisfied pursuant to the terms of that certain Development Agreement – City of Commerce City dated July 12, 2000, by and between the City and Owner, 120<sup>th</sup> and Chambers, LLC and Northwood Village Associates, Ltd. (the "2000 Agreement").
- B. Land Dedication for Schools. Owner shall not be liable for any cash payment or land dedication or a combination thereof to the City for public school facilities in connection with the Property which have all been previously satisfied pursuant to the terms of the 2000 Agreement.
- C. Road Impact Fee. Upon issuance to Owner of a building permit for any structure within the Property, Owner shall pay a road impact fee to the City based on the road impact fee schedule in effect at the time of permit issuance.
- D. Drainage Impact Fee. Upon issuance to Owner of a building permit for any structure within the Property, Owner shall pay a drainage impact fee to the City based on the current drainage impact fee schedule. The Drainage Impact Fee shall be applied to improvements within the Buffalo Run Tributary to Third Creek Drainage Basin in accord with the Buffalo Run Tributary to Third Creek Master Plan.
- E. Water Acquisition Fee. Upon issuance to Owner of a building permit for any structure within the Property, Owner shall pay a water rights acquisition fee in the amount of one thousand, four hundred twenty eight dollars and one cent (\$1,428.01) per living unit of each residential dwelling or non-residential structure on the Property. The amount of this water acquisition fee shall be effective for the year 2016 and shall escalate at a rate of ten percent (10%) per year effective on January 1 of each successive year, which escalation shall be applied in accordance with the year in which the building permit is issued.

#### XIV. RECORDATION - COVENANT RUNNING WITH THE LAND; BINDING EFFECT

- A. Recording. Upon execution hereof, Owner shall, at its sole cost and expense, cause this Agreement to be recorded in the real estate records of the Clerk and Recorder for Adams County, Colorado.
- B. Binding Effect.
1. This Agreement shall be binding on the parties hereto and their respective successors and assigns, without regard to the method or manner of succession or assignment, and shall be deemed and constitute a covenant running with the land.
  2. Except as provided in Section XVII below, any successor or assign of the whole, or of any part, of this Agreement shall be jointly and severally liable for performance of such portion succeeded to or assigned.
  3. This Agreement shall remain in full force and effect until all applicable provisions herein have been fulfilled.

#### XV. DEFAULT - REMEDIES

- A. In the event Owner should fail to timely comply with any of the terms, conditions, covenants and undertakings hereof (a "Default") and the Default is not cured and brought into compliance within thirty (30) days of written Notice to Owner by the City, except as provided in Section V herein, unless the City in writing designates a longer cure period reasonably requested by Developer, the City may call for payment of the Warranty.
- B. The Notice of Default shall specify the conditions of Default. During the cure period the City may withhold building permits, Certificates of Occupancy or provision of new utilities fixtures or services.
- C. Nothing hereunder shall be construed to limit the City, in the event of a Default or other breach of this Agreement, from pursuing any other remedy at law or in equity that may be appropriate under the Home Rule Charter of the City of Commerce City, the Commerce City Revised Municipal Code, applicable law and the legal standards of the State of Colorado or United States before any court of competent jurisdiction. Such remedies shall be cumulative.
- D. In the event of a Default or other breach of this Agreement, the party in Default or breach shall be liable for payment to the non-defaulting/non-breaching party of all costs and reasonable attorney fees incurred by the defaulting/breaching party as a result of the Default or breach.

#### XVI. NOTICE

Any notice that may be given under this Agreement shall be made in writing and shall be deemed effective upon personal service of the other party or upon the date of mailing by certified mail, return receipt requested, addressed as follows (or other address the party to be notified may have designated by like notice to the sender):

OWNER:

Northwood Village Associates, Ltd.  
905 W. 124<sup>th</sup> Avenue, Suite 210  
Westminster, Colorado 80234  
Attn: Russell N. Watterson  
(720) 884-7733

CITY:

Director, Dept. of Public Works  
City of Commerce City  
8602 Rosemary Street  
Commerce City, CO 80022  
(303) 289-8170

**With copies to:**

Director, Dept. of Community Development  
City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

Director, Dept. of Parks, Recreation & Golf  
City of Commerce City  
6060 E. Parkway Drive  
Commerce City, CO 80022

City Attorney's Office  
City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

**XVII. TRANSFER AND ASSIGNMENT; ALTERNATIVE SECURITY**

A. Assignment to District. The City and Owner acknowledge that the Property is wholly located within the service area of the Buffalo Ridge Metropolitan District, a quasi-municipal corporation and subdivision of the State of Colorado (the "District"). Pursuant to its Service Plan, the District is permitted and/or responsible to construct public infrastructure within its service area, including the Property. It is hereby agreed that Owner shall have the right to assign all or any part of its obligations under this Agreement to the District (except for the grant of any property interest required of Owner), in which event City, Owner and District shall execute such documents as may be reasonably required to evidence the assignment of all or part of Owner's obligations hereunder. Owner hereby notifies the City that it may assign to the District, and the District may assume, certain obligations of Owner relating to construction of the Infrastructure relating to the Property as described in Exhibit B. To the extent of any such assignment(s), Owner shall be released from any obligations under this Agreement that are so assigned to and assumed by the District at such time as the District provides the Infrastructure Security and the Landscape Security as set forth in Section II above.

B. Assignment to Homebuilder or Developer. In addition to Owner's right to assign its obligations to the District as provided in subsection A of this Section XVII, Owner shall also have the right to assign its obligations under this Agreement to any homebuilder, developer or other successor owner who purchases the Property from Owner hereunder (a "Homebuilder"). In the event of such assignment, City, Owner and the successor Homebuilder shall execute such documents as may be reasonably required to evidence the assignment of all or part of Owner's obligations hereunder, and Owner shall be released from any obligations under this Agreement that are so assigned to and assumed by a Homebuilder.

**XVIII. MISCELLANEOUS PROVISIONS**

A. Title and Authority. Owner warrants to the City that it is (i) the record owner of the Property; (ii) authorized to execute this Agreement pursuant to a valid ground or similar lease; or (iii) acting in accordance with the currently valid and unrevoked power of attorney of the record owner attached hereto. Each individual executing this Agreement covenants and warrants that he or she is fully authorized to execute this Agreement on behalf of the party he or she represents.

- B. Compliance with Applicable Law. Owner hereby covenants and agrees that it shall comply with all applicable federal, state and local laws, ordinances and regulations.
- C. Governing Law and Venue; Recovery of Costs. This Agreement shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in the 17<sup>th</sup> Judicial District in Adams County, Colorado, and venue for federal court actions shall be in the United States District Court for the District of Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Agreement, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the non-prevailing party.
- D. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*
- E. No Waiver. The failure of the City to take timely action with respect to any breach of any term, covenant or condition hereof shall not be deemed to be a waiver of such performance by Owner, or a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.
- F. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Owner, and nothing contained in this Agreement shall give or allow any such claim to right of action by any other third person on such Agreement. It is the expressed intention of the City and the Owner that no person other than the City or Owner receiving services or benefits under this Agreement shall be deemed a beneficiary hereof.
- G. No Partnership or Agency – Independent Contractor Relationship. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the relationship between Owner and the City shall be as independent contractors, and neither the City nor Owner shall be deemed or constitute an employee, servant, agent, partner or joint venturer of the other.
- H. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.
- I. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- J. Severability. To the extent that this Agreement, may be executed and performance of the obligations of the parties may be accomplished within the intent of this Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.
- K. Acknowledgement of Open Records Act – Public Document. Owner hereby acknowledges that the City is a public entity, subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* (the “Act”); and as such, this Agreement and any exhibits or attachments hereto, and any documents or reports produced pursuant to this Agreement, are be subject to public disclosure under the Act.
- L. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all


parties. No term of this Agreement will be construed or resolved in favor of or against the City or Owner on the basis of which party drafted, the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

- M. Non-Appropriation. If the City fails to appropriate sufficient funds to make any payments or satisfy any obligation of this Agreement, the Owner shall have no remedy at law or in equity to enforce the terms of this Agreement. The parties agree and acknowledge that based on the foregoing, this Agreement does not constitute a multiple fiscal year debt or financial obligation of the City.

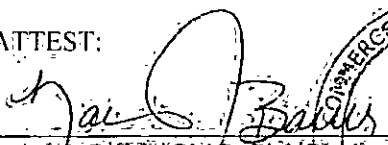
[The remainder of this page intentionally left blank. Signature page(s) follow(s).]

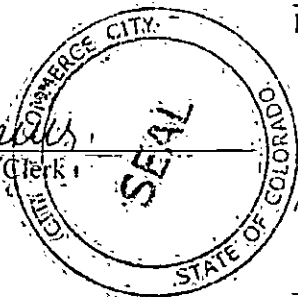
IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this AGREEMENT FOR PUBLIC IMPROVEMENTS, the parties have executed this AGREEMENT FOR PUBLIC IMPROVEMENTS as of the date first written above:

CITY OF COMMERCE CITY

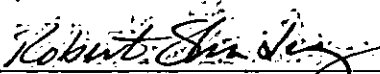
  
Brian K. McBroom, City Manager

ATTEST:


  
Laura J. Bauer, CMC, City Clerk




Approved as to form:

  
Robert D. Sheesley, Senior Assistant City Attorney

Recommended for approval:

  
Christopher C. Gramer, Director,  
Department of Community Development

  
Maria D. Andrea, Director,  
Department of Public Works

OWNER

NORTHWOOD VILLAGE ASSOCIATES,  
LTD., a Colorado limited partnership

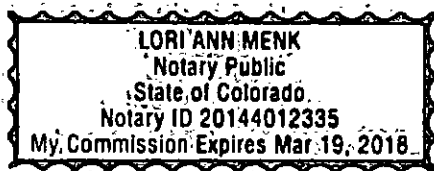
  
Russell N. Watterson, General Partner

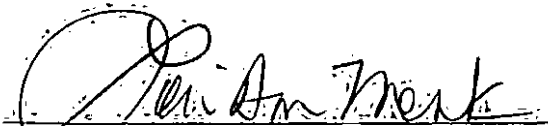
STATE OF COLORADO )  
COUNTY OF Adams ) ss.

The foregoing instrument was signed before me this 12<sup>th</sup> day of July, 2016,  
by: Russell N. Watterson, as General Partner of Northwood Village Associates, Ltd., a Colorado limited  
partnership.

WITNESS my hand and official seal:

My commission expires 3-19-18



  
Notary Public

LOH AMM MERN  
NOTICE PUBLIC  
State of Colorado  
NOTARY ID 50144015332  
MY Commission Expires MAR 18 2018



**EXHIBIT A**

**Property Legal Description**

LOTS 1 THROUGH 7, BLOCK 1,  
LOTS 1 THROUGH 10, BLOCK 2,  
LOTS 1 THROUGH 11, BLOCK 3,  
LOTS 1 THROUGH 11, BLOCK 4,  
LOTS 1 THROUGH 32, BLOCK 5,  
LOTS 1 THROUGH 10, BLOCK 6,  
LOTS 1 THROUGH 8, BLOCK 7,  
LOTS 1 THROUGH 19, BLOCK 8,  
LOTS 1 THROUGH 23, BLOCK 9,  
LOTS 1 THROUGH 10, BLOCK 10,  
LOTS 1 THROUGH 10, BLOCK 11,  
AND TRACTS A THROUGH H,  
THE VILLAGES AT BUFFALO RUN EAST FILING NO. 7,  
COUNTY OF ADAMS, STATE OF COLORADO.

## EXHIBIT B

### Summary of Infrastructure Improvements and schedule of estimated costs related to public roadways and storm sewers.

1. Owner shall construct all public roadways and storm sewers as set forth on pages 2 through 6 of this Exhibit B and as depicted in the phasing diagram as set forth in Exhibit D. Such Infrastructure Improvements shall be constructed in accordance with the construction plans approved by the City.
2. Owner shall construct and install the northern 13' travel lane and 7' bike lane of E. 112<sup>th</sup> Ave. for the length of the Property's frontage, including all necessary infrastructure such as pavement, curb, gutter, sidewalks, trails, storm sewer & drainage, street lights, utilities, etc. as required for the future full build out of a multimodal arterial cross-section in accordance with the City's engineering construction standards and specifications and as set forth in construction plans approved by the City (the "E. 112<sup>th</sup> Ave. Offsite Segment"). The cross section for the E. 112<sup>th</sup> Ave. Offsite Segment shall conform with that shown in the City's transportation plan (the "Transportation Plan") for such segment. The E. 112<sup>th</sup> Ave. Offsite Segment shall be constructed at the time that the Property shall require access to E. 112<sup>th</sup> Ave.  
  
Owner is responsible for acquiring all needed rights-of-way and easements to complete construction of the above. Owner shall convey all rights-of-way and easements to the City upon acceptance of the Infrastructure Improvements by the City.
3. All costs of the design and construction of the E. 112<sup>th</sup> Ave. Offsite Segment as provided above shall be reimbursed to Owner by the City through road impact fees as described in Section XIII.C of this Agreement (the "Road Impact Fees") as funds are available from such Road Impact Fees, or from other funds made available by the City. The parties shall enter into a separate reimbursement agreement which shall set forth the timing and the mechanism for the reimbursement of such costs to Owner by the City.
4. Owner and City acknowledge that the final alignment of the E. 112<sup>th</sup> Ave. Offsite Segment is uncertain due to right-of-way conflicts along E. 112<sup>th</sup> Ave. both east and west of the Property. In the event that the development of the Property occurs prior to the resolution of the final alignment for the E. 112<sup>th</sup> Ave. Offsite Segment, it is anticipated that an interim pavement and access condition for such roadway segment will need to be designed and constructed by Owner. In such event, Owner and the City agree to work together in good faith in the design of such interim roadway and access condition. To the extent that these interim improvements do not benefit or conform to the final design and alignment for E. 112<sup>th</sup> Ave. as set forth in the Transportation Plan, the costs expended by Owner to construct such portion shall not be eligible for reimbursement from the City.
5. If not previously constructed, Owner shall construct a crusher fine trail (or other such surface agreeable to the City) connection, to City standards, between Filings 4 & 5 to the north and Filings 6 & 7. The construction of the trail connections shall occur at the same time as the construction of the Infrastructure Improvements for phase 4 as identified on this Exhibit B.
6. Owner shall contribute payment towards the costs of a future traffic signal at the intersection of Chambers Road and E. 112<sup>th</sup> Ave. Payment shall be based on the pro-rata share of traffic generated by the Villages at Buffalo Run East Filing 7 development as

determined by a traffic study commissioned and paid for by the City at the time of design of the traffic signal.

7. The parties acknowledge that the City's golf course maintenance equipment has been accessing the golf course from a maintenance shed on the south side of E. 112<sup>th</sup> Ave. then crossing E. 112<sup>th</sup> Ave. to the north and traveling to the west across Tract A to the golf course, with Owner's knowledge and permission. By separate document, for no additional consideration, Owner shall enter into an agreement for a permanent easement (the "Golf Course Access Easement Agreement") that shall (i) grant the City ingress and egress from the golf course, through the Property, to its golf course facility, and (ii) allow for the construction and maintenance of a concrete path, for use by the City for its golf course maintenance equipment, across Tract A, in the design location as shown on the approved Villages at Buffalo Run East Filing 7 PUD Permit. With the City's prior written consent, and with assurances satisfactory to Owner of the availability of reimbursement funding, Owner may design and construct a concrete drive within said easement for the access and use of the City's golf course maintenance equipment (not including any pedestrian purpose), and the City shall reimburse Owner for the actual cost of design and construction of the concrete drive. The Golf Course Access Easement Agreement shall contain language whereby City agrees to indemnify and defend Owner from all claims, liability, injury or other damages which result from City's use of the easement.
8. If Owner does not construct and install the Infrastructure Improvements, and the Infrastructure Improvements are constructed by the City (which for all purposes under this paragraph shall include a governmental entity controlled by the City), Owner shall be responsible for the payment to the City of the portion of the cost of the Infrastructure Improvements constructed by the City which satisfy Owner's obligations under this Agreement, except to the extent that the Infrastructure Improvements would have been reimbursed through Road Impact Fees if constructed by Owner. If requested by the City, Owner shall enter into a reimbursement agreement or provide a satisfactory guaranty of payment. If Owner shall construct improvements that benefit a third party (including another developer), the City, at the time of that third party's final plat process, shall request that such third party enter into a reimbursement agreement with Owner for reimbursement of the costs of such improvements.

## PARAGON ENGINEERING CONSULTANTS, INC.

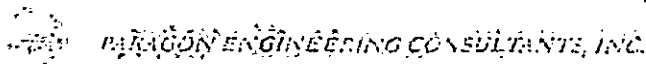
## Exhibit B

## THE VILLAGES AT BUFFALO RUN EAST - FILING NO. 7 - PHASE 1 - COST ESTIMATE - SIA

Public Improvements					Sept. 18, 2015 SUMMARY
WORK ITEM	QUANTITY	UNIT	COST UNIT	COST ESTIMATED	
<b>ROADWAY - Kallispell Street</b>					
Street subgrade preparation	4,954	SY	\$1.35	\$6,687.90	
Asphalt paving, 6" full depth	2,873	SY/IN	\$2.25	\$6,464.25	
6" Vert. Curb & Gutter - Section IB for Island	112	LF	\$9.00	\$1,008.00	
Mountable curb & gutter	1,105	LF	\$10.00	\$11,050.00	
Concrete cross pans	1,368	SF	\$6.00	\$8,208.00	
25' Curb Return (Includes ped. ramp)	6	EA	\$1,500.00	\$9,000.00	
4.5' Concrete sidewalk, 4" thick	598	SY	\$20.00	\$11,960.00	
Handicap ramps, mid-block colored	3	EA	\$1,100.00	\$3,300.00	
Restricted Access control - Golf Course	1	LS	\$1,000.00	\$1,000.00	
Survey Monuments	7	EA	\$125.00	\$875.00	
Subtotal				\$59,553.15	
<b>ROADWAY - E-112th Place</b>					
Street subgrade preparation	2,531	SY	\$1.35	\$3,416.85	
Asphalt paving, 6" full depth	1,346	SY/IN	\$2.25	\$3,028.50	
Mountable curb & gutter	794	LF	\$10.00	\$7,940.00	
4.5' Concrete sidewalk, 4" thick	411	SY	\$20.00	\$8,220.00	
4' Wide concrete pan	117	SF	\$5.00	\$585.00	
Survey Monuments	1	EA	\$125.00	\$125.00	
Subtotal				\$23,315.35	
<b>ROADWAY - Kindege Street</b>					
Street subgrade preparation	3,736	SY	\$1.35	\$5,043.60	
Asphalt paving, 6" full depth	2,417	SY/IN	\$2.25	\$5,438.25	
Sidewalk Chase Drain	1	EA	\$500.00	\$500.00	
Mountable curb & gutter	947	LF	\$10.00	\$9,470.00	
25' Curb Return (Includes ped. ramp)	4	EA	\$1,600.00	\$6,000.00	
4.5' Concrete sidewalk, 4" thick	507	SY	\$20.00	\$10,140.00	
Handicap ramps, mid-block colored	2	EA	\$1,100.00	\$2,200.00	
4' wide concrete tickle channel	521	SF	\$5.00	\$2,605.00	
4' wide concrete pan	218	SF	\$5.00	\$1,090.00	
Grouted Type "L" Riprap	4	SY	\$43.00	\$172.00	
Survey Monuments	6	EA	\$125.00	\$750.00	
Subtotal				\$43,408.85	
<b>ROADWAY - E-112th Way</b>					
Street subgrade preparation	2,365	SY	\$1.35	\$3,192.75	
Asphalt paving, 6" full depth	1,283	SY/IN	\$2.25	\$2,886.75	
Mountable curb & gutter	731	LF	\$10.00	\$7,310.00	
4.5' Concrete sidewalk, 4" thick	397	SY	\$20.00	\$7,940.00	
Subtotal				\$21,329.50	
<b>ROADWAY - E-113th Avenue</b>					
Street subgrade preparation	2,038	SY	\$1.35	\$2,748.60	
Asphalt paving, 6" full depth	1,104	SY/IN	\$2.25	\$2,484.00	
Mountable curb & gutter	631	LF	\$10.00	\$6,310.00	
4.5' Concrete sidewalk, 4" thick	346	SY	\$20.00	\$6,920.00	
Subtotal				\$18,462.60	
Signage & Striping	1	LS	\$2,000.00	\$2,000.00	
Subtotal				\$2,000.00	

## THE VILLAGES AT BUFFALO RUN EAST - FILING NO. 7 - PHASE 1 - COST ESTIMATE - SIA

Public Improvements					Sept. 18, 2015
WORK ITEM	QUANTITY	UNIT	COST UNIT	COST ESTIMATED	SUMMARY
STORM SEWER					
24" R.C.P.	288	LF	\$52.00	\$14,976.00	
30" R.C.P.	566	LF	\$63.00	\$35,658.00	
Inlet, Type 'R', L=5'	1	EA	\$2,700.00	\$2,700.00	
Inlet, Type 'R', L=10'	1	EA	\$3,800.00	\$3,800.00	
Inlet, Type 'C'	1	EA	\$3,500.00	\$3,500.00	
Manhole, 5' Dia.	4	EA	\$1,700.00	\$6,800.00	
Cut and Remove Excess 18" RCP	1	LS	\$500.00	\$500.00	
Connect New Manhole to Existing 18" RCP	1	LS	\$500.00	\$500.00	
Subtotal					\$68,434.00
TOTAL CONSTRUCTION					\$238,603.45

**Exhibit B****THE VILLAGES AT BUFFALO RUN EAST - FILING NO. 7 - PHASE 2 - COST ESTIMATE - SIA**

Public Improvements					Sept. 18, 2015 SUMMARY
WORK ITEM	QUANTITY	UNIT	COST UNIT	COST ESTIMATED	
<b>ROADWAY - Kalispell Street</b>					
Street subgrade preparation	3,908	SY	\$1.35	\$5,275.80	
Asphalt paving, 6" full depth	2,140	SY/IN	\$2.25	\$4,815.00	
Mountable curb & gutter	1,145	LF	\$10.00	\$11,450.00	
25' Curb Return (includes ped. ramp)	2	EA	\$1,500.00	\$3,000.00	
4.5' Concrete sidewalk, 4" thick	578	SY	\$20.00	\$11,560.00	
Handicap ramps, mid-block colored	1	EA	\$300.00	\$300.00	
Survey Monuments	4	EA	\$125.00	\$500.00	
Subtotal					\$36,900.80
<b>ROADWAY - Kirtage Street</b>					
Street subgrade preparation	3,918	SY	\$1.35	\$5,286.80	
Asphalt paving, 6" full depth	2,058	SY/IN	\$2.25	\$4,630.50	
Mountable curb & gutter	1,047	LF	\$10.00	\$10,470.00	
Concrete cross pans	1,590	SF	\$5.00	\$7,950.00	
25' Curb Return (includes ped. ramp)	4	EA	\$1,500.00	\$6,000.00	
4.5' Concrete sidewalk, 4" thick	548	SY	\$20.00	\$10,960.00	
Handicap ramps, mid-block colored	2	EA	\$300.00	\$600.00	
Survey Monuments	5	EA	\$125.00	\$625.00	
Subtotal					\$46,522.10
<b>ROADWAY - E. 114th Avenue</b>					
Street subgrade preparation	1,771	SY	\$1.35	\$2,390.85	
Asphalt paving, 6" full depth	968	SY/IN	\$2.25	\$2,178.00	
Mountable curb & gutter	543	LF	\$10.00	\$5,430.00	
4.5' Concrete sidewalk, 4" thick	295	SY	\$20.00	\$5,900.00	
Survey Monuments	1	EA	\$125.00	\$125.00	
Subtotal					\$18,023.85
<b>ROADWAY - E. 113th Court</b>					
Street subgrade preparation	1,394	SY	\$1.35	\$1,881.90	
Asphalt paving, 6" full depth	863	SY/IN	\$2.25	\$1,941.75	
6" Vert. Curb & Gutter - Section 1B for Island	178	LF	\$9.00	\$1,602.00	
Mountable curb & gutter	279	LF	\$10.00	\$2,790.00	
4.5' Concrete sidewalk, 4" thick	169	SY	\$20.00	\$3,380.00	
Survey Monuments	1	EA	\$125.00	\$125.00	
Subtotal					\$11,720.65
<b>Signage &amp; Striping</b>	1	LS	\$2,000.00	\$2,000.00	
Subtotal					\$2,000.00
<b>STORM SEWER</b>					
30" R.C.P.	658	LF	\$63.00	\$35,154.00	
36" R.C.P.	80	LF	\$104.00	\$8,240.00	
Inlet, Type 'R' L=10'	2	EA	\$3,300.00	\$6,600.00	
Manhole, 6' Dia.	2	EA	\$1,700.00	\$3,400.00	
Subtotal					\$51,394.00
<b>TOTAL CONSTRUCTION</b>					<b>\$164,561.40</b>

PRAGON ENGINEERING CONSULTANTS, INC.

**Exhibit B****THE VILLAGES AT BUFFALO RUN EAST - FILING NO. 7 - PHASE 3 - COST ESTIMATE - SIA**

Public Improvements					
WORK ITEM	QUANTITY	UNIT	COST UNIT	COST ESTIMATED	Sept. 18, 2015 SUMMARY
<b>ROADWAY - Kalspell Street</b>					
Street subgrade preparation	4,803	SY	\$1.35	\$6,484.05	
Asphalt paving, 6" full depth	2,528	SY/IN	\$2.25	\$5,688.00	
Mountable curb & gutter	1,358	LF	\$10.00	\$13,580.00	
Concrete cross pans	1,319	SF	\$5.00	\$6,595.00	
25' Curb Return (includes ped. ramp)	4	EA	\$1,500.00	\$6,000.00	
4.5' Concrete sidewalk, 4" thick	714	SY	\$20.00	\$14,280.00	
Handicap ramps, mid-block colored	2	EA	\$300.00	\$600.00	
Survey Monuments	7	EA	\$125.00	\$875.00	
Subtotal					\$54,102.05
<b>ROADWAY - E. 114th Court</b>					
Street subgrade preparation	1,620	SY	\$1.35	\$2,187.00	
Asphalt paving, 6" full depth	945	SY/IN	\$2.25	\$2,126.25	
6" vert. Curb & gutter - section IIB	178	LF	\$9.00	\$1,602.00	
Mountable curb & gutter	375	LF	\$10.00	\$3,750.00	
4.5' Concrete sidewalk, 4" thick	201	SY	\$20.00	\$4,020.00	
Survey Monuments	1	EA	\$125.00	\$125.00	
Subtotal					\$13,810.25
<b>ROADWAY - Kildridge Street</b>					
Street subgrade preparation	4,189	SY	\$1.35	\$5,655.15	
Asphalt paving, 6" full depth	2,144	SY/IN	\$2.25	\$4,824.00	
Concrete paving (8" thick)	572	SF	\$5.00	\$2,860.00	
Mountable curb & gutter	1,240	LF	\$10.00	\$12,400.00	
Concrete cross pans	716	SF	\$5.00	\$3,580.00	
25' Curb Return (includes ped. ramp)	2	EA	\$1,500.00	\$3,000.00	
4.5' Concrete sidewalk, 4" thick	628	SY	\$20.00	\$12,560.00	
Handicap ramps, mid-block colored	1	EA	\$300.00	\$300.00	
Survey Monuments	1	EA	\$125.00	\$125.00	
Subtotal					\$45,304.15
<b>ROADWAY - E. 115th Avenue</b>					
Street subgrade preparation	2,270	SY	\$1.35	\$3,064.50	
Asphalt paving, 6" full depth	1,257	SY/IN	\$2.25	\$2,828.25	
Mountable curb & gutter	686	LF	\$10.00	\$6,860.00	
4.5' Concrete sidewalk, 4" thick	373	SY	\$20.00	\$7,460.00	
Subtotal					\$20,212.75
<b>Signage &amp; Striping</b>					
	1	LS	\$2,000.00	\$2,000.00	
Subtotal					\$2,000.00
<b>STORM SEWER</b>					
18" R.C.P.	157	LF	\$38.00	\$5,965.00	
24" R.C.P.	383	LF	\$57.00	\$22,401.00	
36" R.C.P.	745	LF	\$104.00	\$77,480.00	
Inlet, Type 'R' L=10'	2	EA	\$3,300.00	\$6,600.00	
Manhole, 5' Dia.	4	EA	\$1,700.00	\$6,800.00	
Concrete End Section, 18" pipe dia.	1	EA	\$625.00	\$625.00	
Type 'L' Riprap	4	SY	\$43.00	\$172.00	
Subtotal					\$120,044.00
<b>TOTAL CONSTRUCTION</b>					<b>\$255,473.20</b>

## PARAGON ENGINEERING CONSULTANTS, INC.

## Exhibit B

## THE VILLAGES AT BUFFALO RUN EAST - FILING NO. 7 - PHASE 4 - COST ESTIMATE - SIA

Public Improvements						Sept. 18, 2015
WORK ITEM	QUANTITY	UNIT	COST UNIT	COST ESTIMATED		SUMMARY
<b>ROADWAY - Kalispell Street</b>						
Street subgrade preparation	5,335	SY	\$1.35	\$7,202.25		
Asphalt paving, 6" full depth	2,780	SY/IN	\$2.25	\$6,255.00		
Mountable curb & gutter	1,489	LF	\$10.00	\$14,890.00		
Concrete cross pans	1,638	SF	\$5.00	\$7,690.00		
25' Curb Return (Includes ped. ramp)	4	EA	\$1,500.00	\$6,000.00		
4.5' Concrete sidewalk, 4" thick	787	SY	\$20.00	\$15,740.00		
Handicap ramps, mid-block colored	2	EA	\$300.00	\$600.00		
8' Wide Concrete Pan	415	SF	\$5.00	\$2,075.00		
Survey Monuments	7	EA	\$125.00	\$875.00		
Subtotal						\$61,327.25
<b>ROADWAY - Buffalo Run Drive</b>						
Street subgrade preparation	3,148	SY	\$1.35	\$4,249.80		
Asphalt paving, 6" full depth	1,655	SY/IN	\$2.25	\$3,723.75		
Mountable curb & gutter	996	LF	\$10.00	\$9,960.00		
4.5' Concrete sidewalk, 4" thick	498	SY	\$20.00	\$9,960.00		
8' Wide Concrete Pan	154	SF	\$5.00	\$770.00		
Survey Monuments	2	EA	\$125.00	\$250.00		
Subtotal						\$28,913.55
<b>ROADWAY - Kitridge Street</b>						
Street subgrade preparation	3,483	SY	\$1.35	\$4,702.05		
Asphalt paving, 6" full depth	1,880	SY/IN	\$2.25	\$4,185.00		
Mountable curb & gutter	999	LF	\$10.00	\$9,990.00		
25' Curb Return (Includes ped. ramp)	2	EA	\$1,600.00	\$3,000.00		
4.5' Concrete sidewalk, 4" thick	523	SY	\$20.00	\$10,460.00		
Handicap ramps, mid-block colored	1	EA	\$300.00	\$300.00		
Survey Monuments	3	EA	\$125.00	\$375.00		
Subtotal						\$33,012.05
<b>ROADWAY - E 115th Place</b>						
Street subgrade preparation	2,585	SY	\$1.35	\$3,489.75		
Asphalt paving, 6" full depth	1,432	SY/IN	\$2.25	\$3,222.00		
Mountable curb & gutter	777	LF	\$10.00	\$7,770.00		
4.5' Concrete sidewalk, 4" thick	422	SY	\$20.00	\$8,440.00		
Subtotal						\$22,921.75
<b>ROADWAY - E 115th Way</b>						
Street subgrade preparation	2,283	SY	\$1.35	\$3,055.05		
Asphalt paving, 6" full depth	1,248	SY/IN	\$2.25	\$2,808.00		
Mountable curb & gutter	685	LF	\$10.00	\$6,850.00		
4.5' Concrete sidewalk, 4" thick	358	SY	\$20.00	\$7,160.00		
Survey Monuments	4	EA	\$125.00	\$500.00		
Subtotal						\$20,373.05
Signage & Striping	1	LS	\$2,000.00	\$2,000.00		
Subtotal						\$2,000.00



## THE VILLAGES AT BUFFALO RUN EAST - FILING NO. 7 - PHASE 4 - COST ESTIMATE - SIA

Public Improvements					
WORK ITEM	QUANTITY	UNIT	COST UNIT	COST ESTIMATED	Sept. 18, 2015 SUMMARY
<b>STORM SEWER</b>					
18" R.C.P.	111	LF	\$38.00	\$4,218.00	
24" R.C.P.	566	LF	\$57.00	\$32,262.00	
36" R.C.P.	968	LF	\$104.00	\$100,672.00	
42" R.C.P.	398	LF	\$125.00	\$49,750.00	
34x53 HERCP	284	LF	\$125.00	\$35,500.00	
Inlet, Type 'R' L=5'	8	EA	\$2,700.00	\$21,600.00	
Inlet, Type 'R' L=10'	3	EA	\$3,300.00	\$9,900.00	
Inlet, Type 'R' L=15'	1	EA	\$5,500.00	\$5,500.00	
Manhole, 5' Dia.	3	EA	\$1,700.00	\$5,100.00	
Manhole, 6' Dia.	1	EA	\$2,200.00	\$2,200.00	
Drop Manhole, 6' Dia.	1	EA	\$2,200.00	\$2,200.00	
Box Base MH	1	EA	\$5,500.00	\$5,500.00	
Remove Existing 6' Dia. Manhole	1	EA	\$1,000.00	\$1,000.00	
Concrete cradle over existing San Sewer Line	1	EA	\$750.00	\$750.00	
Subtotal					\$276,152.00
<b>TOTAL CONSTRUCTION</b>					<b>\$444,699.65</b>

**EXHIBIT C**

**Summary of Landscape Improvements for principal and minor arterial roadways,  
major and minor collector roadways and all private park, trail and open space areas,  
(including schedule of estimated costs).**

Owner shall install and maintain in perpetuity the required Landscaping Improvements along all principal and minor arterials and major and minor collector roadways under the approved PUD Permit for this Filing. Medians within arterials shall be installed and maintained by the City.

**Opinion of Probable Cost**

Buffalo Run Filing 7  
Commerce City, Colorado  
September 10, 2015

Description	Size	Quantity	Unit Price	Total Price
<b>Tract A</b>				
<b>Site Work</b>				
6" Thick Concrete Flatwork		2,386 sf	\$7.50	\$17,895.00
Cedar Mulch		3,637 sf	\$3.50	\$12,729.50
Landscape Edger		90 lf	\$5.00	\$450.00
<b>Landscape Materials</b>				
Deciduous Trees	2" Caliper	1 ea	\$420.00	\$420.00
Evergreen Trees	6' Height	7 ea	\$425.00	\$2,975.00
Ornamental Trees	2" Caliper	3 ea	\$425.00	\$1,275.00
Deciduous Shrubs	#5 Container	50 ea	\$34.00	\$1,700.00
Evergreen Shrubs	#5 Container	5 ea	\$42.00	\$210.00
Ornamental Grasses	#1 Container	47 ea	\$20.00	\$940.00
Perennials	#1 Container	22 ea	\$17.00	\$374.00
Kentucky Bluegrass Sod		5,853 sf	\$0.75	\$4,389.75
<b>Irrigation</b>				
Irrigation (Pop-ups, Rotors, Drip)		9,490 sf	\$1.00	\$9,490.00
<b>Tract A, Total</b>				<b>\$52,848.25</b>
<b>Tract B</b>				
<b>Site Work</b>				
4" Thick Concrete Flatwork		1,765 sf	\$8.00	\$10,990.00
Cedar Mulch		763 sf	\$3.50	\$2,670.50
Landscape Edger		121 lf	\$5.00	\$605.00
3-Rail Wood Fencing		450 lf	\$16.00	\$7,200.00
<b>Site Amenities</b>				
Benches		1 ea	\$1,250.00	\$1,250.00
Trash Receptacles		1 ea	\$1,800.00	\$1,800.00
<b>Landscape Materials</b>				
Deciduous Trees	2" Caliper	11 ea	\$420.00	\$4,620.00
Evergreen Trees	6' Height	6 ea	\$425.00	\$2,550.00
Ornamental Trees	2" Caliper	5 ea	\$425.00	\$2,125.00
Deciduous Shrubs	#5 Container	41 ea	\$34.00	\$1,394.00
Kentucky Bluegrass Sod		11,615 sf	\$0.75	\$8,711.25
Native Seed with Soil Preparation		11,823 sf	\$0.25	\$2,955.75
<b>Irrigation</b>				
Irrigation (Pop-ups, Rotors, Drip)		12,378 sf	\$1.00	\$12,378.00
Irrigation (Native - Single Throw)		11,823 sf	\$0.50	\$5,911.50
<b>Tract B, Total</b>				<b>\$64,761.00</b>

**Tract C****Site Work**

4" Thick Concrete Flatwork	1693 sf	\$6.00	\$10,158.00
Cedar Mulch	1,140 sf	\$3.50	\$3,990.00
Landscape Edger	157 lf	\$5.00	\$785.00
3-Rail Wood Fencing	427 lf	\$16.00	\$6,832.00

**Site Amenities**

Benches	1 ea	\$1,250.00	\$1,250.00
Trash Receptacles	1 ea	\$1,800.00	\$1,800.00

**Landscape Materials**

Deciduous Trees	2" Caliper	11 ea	\$420.00	\$4,620.00
Evergreen Trees	6' Height	6 ea	\$425.00	\$2,550.00
Ornamental Trees	2" Caliper	5 ea	\$425.00	\$2,125.00
Deciduous Shrubs	#5 Container	28 ea	\$34.00	\$952.00
Evergreen Shrubs	#5 Container	5 ea	\$42.00	\$210.00
Kentucky Bluegrass Sod		9,574 sf	\$0.75	\$7,180.50
Native Seed with Soil Preparation		9,402 sf	\$0.25	\$2,350.50

**Irrigation**

Irrigation (Pop-ups, Rotors, Drip)	10,714 sf	\$1.00	\$10,714.00
Irrigation (Native - Single Throw)	9,402 sf	\$0.50	\$4,701.00

**Tract C Total** **\$60,218.00****Tract D****Site Work**

3-Rail Wood Fencing	64 lf	\$16.00	\$1,024.00
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**Landscape Materials**

Deciduous Trees	2" Caliper	1 ea	\$420.00	\$420.00
Ornamental Trees	2" Caliper	3 ea	\$425.00	\$1,275.00
Kentucky Bluegrass Sod		1,038 sf	\$0.75	\$778.50
Native Seed with Soil Preparation		8,465 sf	\$0.25	\$2,116.25

**Irrigation**

Irrigation (Pop-ups, Rotors, Drip)	1,038 sf	\$1.00	\$1,038.00
Irrigation (Native - Single Throw)	8,465 sf	\$0.50	\$4,232.50

**Tract D Total** **\$10,884.25****Tract E****Landscape Materials**

Kentucky Bluegrass Sod	278 sf	\$0.75	\$208.50
Native Seed with Soil Preparation	19,639 sf	\$0.25	\$4,909.75

**Irrigation**

Irrigation (Pop-ups, Rotors, Drip)	278 sf	\$1.00	\$278.00
Irrigation (Native - Single Throw)	19,639 sf	\$0.50	\$9,819.50

**Tract E Total** **\$15,216.75**

**Tract F****Site Work**

Crusher Fines Pathway - 4" Compacted Depth	1,184 sf	\$2.50	\$2,960.00
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**Landscape Materials**

Kentucky Bluegrass Sod	.75 sf	\$0.75	\$56.25
Native Seed with Soil Preparation	17,000 sf	\$0.25	\$4,250.00

**Irrigation**

Irrigation (Pop-ups, Rotors, Drip)	.75 sf	\$1.00	\$75.00
Irrigation (Native - Single Throw)	17,000 sf	\$0.50	\$8,500.00

<b>Tract F Total</b>			<b>\$15,841.25</b>
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**Tract G****Landscape Materials**

Kentucky Bluegrass Sod	109 sf	\$0.75	\$81.75
Native Seed with Soil Preparation	1,952 sf	\$0.25	\$488.00

**Irrigation**

Irrigation (Pop-ups, Rotors, Drip)	109 sf	\$1.00	\$109.00
Irrigation (Native - Single Throw)	1,952 sf	\$0.50	\$976.00

<b>Tract G Total</b>			<b>\$1,654.75</b>
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**Tract H****Site Work**

Cedar Mulch	6,947 sf	\$3.50	\$24,314.50
1-1/2" - 3" Cobblestone Mulch	175 sf	\$4.50	\$148.50
Landscape Edger	99 lf	\$5.00	\$495.00

**Landscape Materials**

Deciduous Trees	2" Caliper	11 ea	\$420.00	\$4,620.00
Evergreen Trees	6" Height	6 ea	\$425.00	\$2,550.00
Ornamental Trees	2" Caliper	6 ea	\$425.00	\$2,550.00
Deciduous Shrubs	#5 Container	55 ea	\$34.00	\$1,870.00
Ornamental Grasses	#1 Container	58 ea	\$20.00	\$1,160.00
Perennials	#1 Container	5 ea	\$17.00	\$85.00
Kentucky Bluegrass Sod		6,805 sf	\$0.75	\$5,103.75

**Irrigation**

Irrigation (Pop-ups, Rotors, Drip)	13,752 sf	\$1.00	\$13,752.00
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<b>Tract H Total</b>			<b>\$56,548.75</b>
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<b>Grand Total</b>			<b>\$278,072.00</b>
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# EXHIBIT D

## Phasing Diagram



**EXHIBIT D**

March 23, 2016 Agreement for Public Improvements (Villages at Buffalo Run East,  
Filing No. 6

**AGREEMENT FOR PUBLIC IMPROVEMENTS**

(Villages at Buffalo Run East, Filing No. 6)

THIS AGREEMENT FOR PUBLIC IMPROVEMENTS (the "Agreement") is made and entered into effective this 23<sup>rd</sup> day of March, 2016 (the "Effective Date") by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60<sup>th</sup> Avenue, Commerce City, CO 80022 (the "City"), and 120<sup>TH</sup> AND BUCKLEY ASSOCIATES, LTD., a Colorado limited partnership whose address is 905 W. 124<sup>th</sup> Avenue, Suite 210, Westminster, CO 80234 (hereinafter, "Owner").

WHEREAS, Owner owns certain real property within the City generally located at a part of Section 5, Township 2 South, Range 66 West, of the 6<sup>th</sup> P.M., City of Commerce City, County of Adams, State of Colorado, and more specifically described in Exhibit A attached hereto and incorporated herein by this reference, also known as Villages at Buffalo Run East, Filing No.6 (the "Property");

WHEREAS, Owner intends to subdivide and/or develop the Property, the effect of which will directly impact and generate the need for on-site and off-site improvements;

WHEREAS, the City has enacted a Land Development Code (the "LDC") that, as a result of the subdivision and/or development, requires certain public improvements to be installed and/or constructed on or adjacent to the Property; and

WHEREAS, Owner acknowledges that the improvements required herein are reasonably attributable to the special impacts that will be generated by the proposed uses of the Property and that the terms and conditions set forth in this Agreement are reasonable, necessary and appropriate.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

**I. IMPROVEMENTS REQUIRED**

A. Owner shall provide the improvements or other performance requirements as set forth in Exhibits B and C (collectively, the "Improvements") as follows:

1. Exhibit B, attached hereto and incorporated herein by this reference, contains all required infrastructure improvements related to public roadways and storm sewers (the "Infrastructure Improvements").
2. Exhibit C, attached hereto and incorporated herein by this reference, contains all required landscape improvements for principal and minor arterial roadways, major and minor collector roadways and all private park, trail and open space areas (the "Landscape Improvements").
3. Exhibits B and C include a description of Improvements and schedules of the estimated costs of Improvements to be accepted by the City. In the event construction of Infrastructure Improvements and/or installation of Landscape Improvements have not begun within one (1) year of the Effective Date, Owner shall submit to the City not later than ninety (90) days prior to commencement of construction or installation, as applicable, revised Exhibits B and/or C, as appropriate, providing then-current schedules of estimated costs for the applicable Improvements.
4. Exhibits B and C are provided for surety estimates only and shall not be used to establish construction standards or specifications. In the event of a conflict between Exhibit B or

Exhibit C and the construction or landscape plans approved by the City, the approved plans shall govern.

- B. Owner shall, at its sole expense, design, construct and install the Improvements for initial acceptance as provided in Section IV herein ("Initial Acceptance") and shall repair the Improvements as necessary until final acceptance by the City as provided in Section V herein ("Final Acceptance").
- C. Construction and landscape plans must be approved by the City prior to commencement of construction of Infrastructure Improvements or installation of Landscape Improvements.

## **II. SECURITY FOR CONSTRUCTION/INSTALLATION OF IMPROVEMENTS**

### **A. Security for Construction of Infrastructure Improvements.**

- 1. Prior to commencing construction of the Infrastructure Improvements, Owner shall provide to the City cash-in-lieu, an irrevocable letter of credit or a performance surety bond payable to the City equal to one hundred fifteen percent (115%) of the estimated cost of the Infrastructure Improvements (the "Infrastructure Security"). A bond or letter of credit shall be valid until Initial Acceptance of the Infrastructure Improvements. Any bond or letter of credit shall meet the requirements for bonds or letters of credit set forth in subsections III(D)(1-2).
- 2. Upon issuance of the letter of Initial Acceptance described in Section IV(A), the City shall release the Infrastructure Security so long as all releases of mechanic's lien have been filed with respect to the project and an acceptable warranty performance guarantee as provided in Section III has been executed and delivered to the City.
- 3. Owner Default.
  - a. In the event Owner fails to obtain Initial Acceptance within eighteen (18) months from the commencement of construction, subject to extension at the City's sole discretion, the City may retain the Infrastructure Security and apply such funds to completion of the Infrastructure Improvements.
  - b. The City agrees to refund any portion of the Infrastructure Security not applied to completion of the Infrastructure Improvements.
  - c. The method and manner in which the City elects to construct or install the Infrastructure Improvements shall be at the sole discretion of the City; provided, however, that nothing herein shall obligate the City to install or complete the Infrastructure Improvements and nothing herein shall prevent, prohibit or limit the remedies available to the City to enforce the obligations of this Agreement.

### **B. Security for Installation of Landscape Improvements.**

- 1. In the event Owner is unable to complete the Landscape Improvements prior to Initial Acceptance of the Infrastructure Improvements due to periods of adverse weather or similar reasons approved by the City, Owner shall provide to the City cash-in-lieu, an irrevocable letter of credit or a performance surety bond payable to the City equal to one hundred twenty-five percent (125%) of the estimated cost of the uncompleted Landscape Improvements (the "Landscape Security"). Any irrevocable letter of credit or performance surety bond provided

by Developer shall be valid until Initial Acceptance of the Landscape Improvements. Any bond or letter of credit shall meet the requirements set forth in subsections III(D)(1-2).

2. Except as provided in subsection (B)(4) herein, the City shall release the Landscape Security only upon completion and City acceptance of all Landscape Improvements so long as all releases of mechanic's lien have been filed with respect to the Landscape Improvements and an acceptable warranty performance guarantee as provided in Section III has been executed and delivered to the City.
3. If delayed as provided for in subsection B(1) herein, Owner shall complete the Landscape Improvements not later than eight (8) months from the date of written request by the City.
4. **Owner Default**
  - a. In the event Owner fails to complete the Landscape Improvements within eight (8) months from the date of the City's written request, the City may retain the Landscape Security and apply such funds to completion of the Landscape Improvements.
  - b. The City agrees to refund any portion of the Landscape Security not applied to completion of the Landscape Improvements.
  - c. The method and manner in which the City elects to install the Landscape Improvements shall be at the sole discretion of the City; provided, however, that nothing herein shall obligate the City to install or complete the Landscape Improvements and nothing herein shall prevent, prohibit or limit the remedies available to the City to enforce the obligations of this Agreement.
5. Regardless of the provisions of this Section II(B), the City shall not be responsible for maintaining the Landscape Improvements within the right-of-way of any arterial or collector roadways. The City shall maintain medians within principal and minor arterials to the extent landscaping has been installed by the City. Individual lot owners shall be required to maintain tree lawn areas as approved and installed along local roadways.

### **III. WARRANTY**

- A. Owner hereby warrants all Improvements to be free from defects, including but not limited to, defects of materials, workmanship and design and that the Improvements otherwise fully comply with all applicable City standards and specifications in effect on the date of this Agreement.
- B. Prior to Initial Acceptance of the Infrastructure Improvements, Owner shall execute and deliver to the City a warranty performance guarantee equal to fifteen percent (15%) of the total estimated cost of the Infrastructure Improvements (the "Infrastructure Warranty").
- C. Prior to Initial Acceptance of the Landscape Improvements, Developer shall execute and deliver to the City a warranty performance guarantee equal to twenty-five percent (25%) of the total cost of Landscape Improvements to include all vegetative materials, irrigation and recreation facilities (the "Landscape Warranty"). Developer shall execute the Landscape Warranty as herein provided without regard to which party completed the Landscape Improvements.
- D. The Infrastructure Warranty and the Landscape Warranty (together, the "Warranties") shall each be in the form of an irrevocable letter of credit, warranty bond or cash escrow and shall provide security for costs that may be incurred in repairing or replacing the respective Improvements for eighteen (18) months from the date of issuance of the Initial Acceptance (the "Warranty Period").



1. Any entity issuing a bond shall have at least an "A" rating from Moody's, or an equivalent rating as designated by a nationally recognized ratings firm, and shall be included in the most recent listing of companies holding Certificates of Authority as Acceptable sureties on Federal Bonds and as Acceptable Reinsuring Companies, Department of Treasury, Circular 570.
  2. Letters of credit shall be in a form acceptable to the City and shall be drawn on a local Colorado institution acceptable to the City.
- E. In the event any substantial repair or replacement is required to any of the Improvements during the Warranty Period and such repair or replacement is not timely made upon notice of defect, or in any event before the expiration of the Warranty Period, the City may elect to:
1. Extend the Warranty Period for up to an additional one (1) year after acceptance of the completed repair or replacement and require the Owner to extend the term of the appropriate Warranty;
  2. Call the appropriate Warranty and secure repair or replacement of the non-conforming Improvements; and/or
  3. Order denial or suspension of outstanding building permits or Certificates of Occupancy until repair or replacement of the non-conforming Improvements has been performed and Initial Acceptance thereof has been granted by the City.

#### **IV. INITIAL ACCEPTANCE**

A. **Initial Acceptance of Infrastructure Improvements.**

1. In order to obtain Initial Acceptance of Infrastructure Improvements for a phase or an entire project, Owner shall submit to the City a written request for Initial Acceptance of Infrastructure Improvements and one (1) copy of record drawings.
2. Within ten (10) business days of receipt of a request for Initial Acceptance, the City shall review the record drawings and shall either approve the drawings or return the drawings to the Owner with comments.
  - a. In the event the record drawings are returned to Owner with comments, Owner shall submit to the City the "as built" drawings revised in accord with the City's comments.
  - b. Once the record drawings are approved, Owner shall submit to the City "certified as built" drawings on Mylar and electronic AutoCAD files.
3. Within ten (10) business days of receipt of a request for Initial Acceptance of Infrastructure Improvements, the City shall inspect the Infrastructure Improvements.
  - a. During or subsequent to inspection of the Infrastructure Improvements, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City.
  - b. In the event Owner fails to correct, repair or replace the punch list items within thirty (30) days of the date of the punch list, the City shall not grant Initial Acceptance, but shall instead conduct a subsequent inspection of the Infrastructure Improvements and

generate a new written punch list. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City.

- c. In no event shall the City grant Initial Acceptance of Infrastructure Improvements until after Developer has corrected, repaired and replaced the punch list items to the City's satisfaction.
4. Upon a finding of satisfactory completion of the Infrastructure Improvements in compliance herewith and with all applicable ordinances and standards of the City, and upon execution and delivery to the City of the Infrastructure Warranty, the City shall grant Initial Acceptance of the Infrastructure Improvements via certified letter to Owner, the date of which shall constitute the date of commencement of the Warranty Period for the Infrastructure Improvements as identified in Section III(D).
5. Building permits may be issued prior to Initial Acceptance for the phase for which the Infrastructure Security has issued provided that all required fire hydrants, water for fire suppression, curb and gutter have been constructed to City specifications and paved emergency access to the lots on which building permits are requested are satisfactory as determined by the City. Certificates of Occupancy shall not be issued prior to Initial Acceptance of Infrastructure Improvements.

**B. Initial Acceptance of Landscape Improvements.**

1. In order to obtain Initial Acceptance of Landscape Improvements for a phase or an entire project, Owner shall submit to the City a written request for Initial Acceptance of Landscape Improvements.
2. The City shall inspect the Landscape Improvements within a reasonable time after receipt of a request for Initial Acceptance.
  - a. During or subsequent to such inspection, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City.
    - i. Not less than thirty (30) days after the date the punch list is provided to Owner, unless Owner authorizes an earlier inspection, the City shall conduct a re-inspection of the Improvements and generate a new written punch list unless all punch list items have been corrected, repaired or replaced to the satisfaction of the City.
    - ii. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City, at which time, the City shall proceed with Initial Acceptance as set forth herein.
  - b. Failure to correct, repair or replace the punch list items as provided herein shall constitute cause to deny any request for Initial Acceptance, and in no event shall the City grant Initial Acceptance until after Owner has corrected, repaired and replaced the punch list items to the City's satisfaction.
3. Upon a finding of satisfactory completion of the Landscape Improvements in compliance herewith and with all applicable ordinances and standards of the City, and upon execution and delivery to the City of the Landscape Warranty, the City shall grant Initial Acceptance of the Landscape Improvements via certified letter to Owner, the date of which shall constitute

the date of commencement of the Warranty Period for the Landscape Improvements as provided in Section III(D).

## **V. FINAL ACCEPTANCE**

### **A. Timing for Final Acceptance.**

1. Owner shall obtain Final Acceptance of the Infrastructure Improvements, as provided herein, prior to the expiration of the applicable Warranty Period.
2. Owner shall obtain Final Acceptance of the Landscape Improvements, as provided herein, prior to the expiration of the applicable Warranty Period.

### **B. Procedure for Final Acceptance.** Not earlier than sixty (60) days or later than forty-five (45) days prior to the date of expiration of a Warranty Period, Owner shall submit a written request for Final Acceptance of the related Improvements.

1. Within a reasonable time after Owner's request for Final Acceptance, the City shall conduct a final inspection of the appropriate Improvements (either Landscape or Infrastructure) or authorized phase thereof.
  - a. During or subsequent to such inspection, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City. Failure to correct, repair or replace the punch list items as provided herein shall constitute cause to deny any request for Final Acceptance.
    - i. Not less than thirty (30) days after the date the punch list is provided to Owner, unless Owner authorizes an earlier inspection, the City shall conduct a re-inspection of the Improvements and generate a new written punch list unless all punch list items have been corrected, repaired or replaced to the satisfaction of the City.
    - ii. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City, at which time, the City shall proceed with Final Acceptance as set forth herein.
  - b. If the subdivision and/or development of the Property involves a land dedication to the City for a future park or school site, floodplain or open space (the "Dedicated Area(s)"), the City shall inspect such Dedicated Area(s). In the event any damage or dumping has occurred in, on or to any Dedicated Area, Owner shall be responsible for the restoration thereof. Despite the issuance of a Letter of Final Acceptance pursuant to this Section V, if any, the City shall not release the Landscape Warranty unless Owner has restored the Dedicated Area(s) to the City's satisfaction. Nothing herein shall be construed or deemed as requiring the City to release the Landscape Warranty prior to Final Acceptance of the Landscape Improvements.
2. Owner shall certify to the City that all persons and entities having provided labor and/or services in the construction or installation of the Improvements for which Final Acceptance is being sought have been fully paid subject to such exceptions as may be disclosed to the City and that are acceptable to the City.

3. If the Improvements subject to the inspection request fully conform to this Agreement and the City's applicable standards and specifications, and/or all corrections, repairs or replacements have been made to bring the Improvements into conformance, the City shall issue to Developer, via certified mail, a Letter of Completion and Final Acceptance.
4. Subject to the provisions of subsection (1)(b) of this Section V(B), the City shall release the Warranty only after Final Acceptance of the Improvements related thereto.
- C. In the event Owner does not request Final Acceptance of Improvements forty-five (45) days prior to the expiration of the Warranty Period related thereto, or as extended by the City, the City shall have the right at any time thereafter to conduct a final inspection of the Improvements.
- D. If, pursuant to final inspection requested by the Owner or initiated by the City, including inspection of Dedicated Area(s), any Improvements or Dedicated Area(s) are found not to conform to the requirements of this Agreement or applicable City standards and specifications, the City may exercise any and all rights set forth in Section XV.
- E. Owner's failure to obtain Final Acceptance of Improvements prior to expiration of the Warranty Period related thereto shall constitute a Default under this Agreement, and the City may exercise its rights to secure performance as provided in Section XV.
- F. Nothing herein shall be construed or deemed as requiring the City to finally accept or release from Warranty any Improvements that are defective or damaged.

#### **VI. PHASING**

Phasing of the Improvements shall be permitted subject to the terms and conditions of this Agreement and as described and depicted on Exhibit D, attached hereto and incorporated herein by this reference. Owner, at its discretion, may modify the sequence of phase construction if approved administratively by the City. It is contemplated that the one or more phases of construction of Improvements for the Property may be performed by the Buffalo Ridge Metropolitan District and/or a Homebuilder pursuant to a partial assignment and assumption of this Agreement.

#### **VII. DEVELOPMENT STANDARDS AND PROCEDURES**

- A. **Engineering and Landscaping Services.** Owner shall procure at its sole expense all professional services, including all engineering, surveying and landscaping services, necessary and appropriate for development of the Property, which services shall fully conform to the City's applicable ordinances, standards and specifications.
  1. All professional services shall be performed by engineers, surveyors, architects or other professionals duly licensed, accredited and/or certified in accordance with applicable state and local law.
  2. Landscaping services shall be performed by persons trained in landscape architecture or horticultural design.
- B. **Plan Review.** All applicable plans must be reviewed and approved by the City prior to construction or installation. No construction or installation of Improvements shall occur without prior plan approval.

- C. **Right-of-Way Permits.** Prior to commencing construction of the Improvements, Owner shall obtain all permits required under Chapter 10 of the Commerce City Revised Municipal Code, pay all fees related thereto and pay any associated City use taxes, if required.
- D. **Testing.** Owner shall employ at its sole expense a professional qualified, independent testing company to perform all testing of materials or construction that may reasonably be required by the City to ensure compliance with City standards and specifications. Owner shall furnish to the City certified copies of test results and shall release and authorize full access to the City and its designated representatives all work-up materials, procedures and documents used in preparing test results.
- E. **Inspection.** During construction or installation of the Improvements and until Final Acceptance thereof, Owner shall request and coordinate with the City all inspections of the Improvements. If the required inspections are not conducted, the City shall have the right to require Owner to remove and replace the Improvements. Owner shall reasonably cooperate and assist the City to gain access to the areas designated for inspection. Owner shall also notify the City upon discovery of any non-conformance with the approved plans, standards and specifications for the Improvements. Inspection and acceptance by the City of any Improvements shall not relieve Owner of any responsibilities under this Agreement.
- F. **Erosion Control.** All work associated with the installation or construction of Improvements shall conform to the City's requirements for erosion control and the approved erosion and sediment control drawings associated with the Property.
1. Owner shall, at its own expense, keep on-site and adjacent streets and rights-of-way used as construction routes clean of mud, rocks and debris at all times during construction.
  2. Within twenty-four (24) hours of verbal notification by the City of non-compliance with this subsection F, Owner shall commence clean-up operations and diligently pursue completion of such clean-up operations to the satisfaction of the City.
  3. If Owner fails to respond within 24 hours, the City is unable to contact Owner after reasonable effort, or Owner fails to diligently pursue clean-up operations to the satisfaction of the City, the City may take corrective action to clear the affected streets and rights-of-way and invoice Owner at the City's prevailing rate for which Developer shall be liable for prompt payment.

#### **VIII. OBLIGATIONS OF SUBSEQUENT MORTGAGEE OR LIEN HOLDER**

Any subsequent mortgagees or lien holders shall subordinate their interests in the Property to the rights and remedies of the City for purposes of this Agreement. No subsequent mortgagee or lienholder is obligated to complete any of the Improvements unless such subsequent mortgagee or lienholder becomes a successor owner and continues development of the Property by requesting permits, certificates or other approvals from the City. In such event, the Improvements shall be completed pursuant to the terms and conditions of this Agreement.

#### **IX. CONTRACTORS AND SUPPLIERS – LICENSING; PAYMENT – REMOVAL OF LIENS**

- A. Owner shall ensure that all contractors and/or subcontractors employed by Owner are licensed as required by state and local law before any work on the Improvements is commenced.
- B. Owner shall at all times promptly make payments of all amounts due to persons supplying labor, materials or services in connection with the Improvements and to any persons who may otherwise

be entitled to assert a lien upon the Property by virtue of C.R.S. § 38-22-102, *et seq.* Owner shall indemnify and defend the City with respect to any such lien and, regardless of the merits of the lien, shall immediately take any and all steps necessary to remove the lien from the Property.

#### **X. NON-LIABILITY**

Owner acknowledges that the City's review and approval of plans for the development of the Property are done in furtherance of the general public health, safety and welfare and that no specific relationship with, or duty of care to, Owner or third parties is assumed by such review approval or immunity waived as is more specifically set forth in Colorado Governmental Immunity Act, C.R.S. § 24-10-106.5.

#### **XI. INDEMNIFICATION**

Owner shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations or omissions of Owner or its employees, agents, representatives or other persons acting under Owner's direction or control in performing or failing to perform the work to be performed under this Agreement. Owner shall indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the actions or omissions of Owner and/or its employees, agents or representatives or other persons acting under Owner's direction or control. The provisions set forth in this Section shall survive the completion of the Improvements and the satisfaction, expiration or termination of this Agreement. The obligations of this Section XI shall not apply to the extent the City becomes liable by final judgment to pay a third party as the result of the negligent act or omission, error, professional error, mistake, accident or other fault of the City.

#### **XII. INSURANCE**

A. **Coverages.** Prior to beginning any work whatsoever under this Agreement including preparatory work such as surveying, staking or clearing the Property, Owner shall, at no cost to the City, procure the following coverages and maintain such coverages until all Improvements have been finally accepted:

1. Commercial General or Business Liability coverage insuring against liability for personal injury, bodily injury or death arising out of the performance of Owner's obligations under this Agreement with minimum combined single limits of One Million Dollars (\$1,000,000.00) for each occurrence and One Million Dollars (\$1,000,000.00) general aggregate.
2. Products/Completed Operations coverage insuring against any liability for bodily injury or property damage caused by the completed Improvements with a combined single limit of at least One Million Dollars (\$1,000,000.00).
3. Automobile Liability coverage with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) for any one occurrence with respect to each of Owner's owned, hired or non-owned vehicles assigned to or used in connection with the performance of Owner's obligations under this Agreement. In the event Owner's insurance does not cover non-owned vehicles, the requirements of this paragraph shall be met by each employee of Owner who uses a vehicle in connection with this Agreement, and Owner agrees to assure compliance by each employee prior to allowing use of a vehicle not owned by Owner.

4. **Workers' Compensation insurance** as required by Colorado state statute and any other insurance required by applicable law.
- B. **Self-Insurance.** Evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages if first approved by the City in its sole discretion.
- C. **Requirements.** Owner shall at a minimum procure and maintain the insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Owner pursuant to retroactive dates. Coverage for extended reporting periods shall be procured to maintain such continuous coverage.
- D. **Certificates of Insurance and Endorsements.**
  1. One or more Certificates of Insurance ("Certificates") shall be completed by Owner's insurance agent(s) as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, which Certificates shall be subject to review and approval by the City prior to commencement of any work under this Agreement.
  2. In the event any of the Improvements are to be constructed or installed on or within City right-of-way or other City-owned property, each insurance policy required herein, except Workers' compensation coverage, shall name the City as additional insured, and Owner shall furnish to the City all necessary endorsements evidencing the insurance coverages required by this Agreement.
  3. Completed Certificates shall be sent to:  
  

**Risk Manager**  
City of Commerce City Human Resources Department  
7887 E. 60<sup>th</sup> Ave.  
Commerce City, CO 80022

**City Engineer**  
City of Commerce City Public Works Department  
8602 Rosemary Street  
Commerce City, CO 80022
  4. The City shall review the Certificates and endorsements as soon as practical, typically within ten (10) working days of receipt. The Certificates shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.
  5. In the event the period of coverage for any insurance required herein expires prior to the conclusion of Owner's obligations hereunder, Owner shall, not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the City with a new certificate of insurance and endorsements evidencing new or continuing coverage in accordance with the requirements of this Agreement.
- E. **Failure to Obtain Insurance Constitutes Breach.** Owner's failure to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a breach of this Agreement and, if said breach is not cured within ten (10) days of written notice by the City to Owner, the City may immediately terminate this Agreement, or at its discretion, the City may

procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Owner to the City upon demand, or the City may offset the cost of the premiums against any monies due to Owner from the City, regardless of the source or location of such funds.

- F. Certified Copies. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Owner agrees to execute any and all documents necessary to allow the City access to any and all insurance policies and endorsements pertaining to this Agreement.
- G. Subcontracts. Owner shall include the insurance requirements set forth in this Agreement in all contracts and subcontracts entered into for the construction or installation of the Improvements. Owner shall be responsible for the failure of any such contractor or subcontractor to procure and maintain insurance meeting the requirements set forth in this Agreement. The City reserves the right to approve variations in the insurance requirements applicable to such contractors or subcontractors upon joint written request of the contractor or subcontractor and Owner if, in the City's discretion, such variations do not substantially affect the City's interests.

### **XIII. FEES, CHARGES AND DEDICATIONS**

Fees, charges and dedications shall be assessed pursuant to Article IX of the LDC or as amended by City Council. The fees associated with the Property are outlined as follows:

- A. Public Parks and Recreation Fees. Owner shall not be liable for any cash payment or land dedication or a combination thereof for public parks, trails and recreation facilities in connection with the Property, which have all been previously satisfied pursuant to the terms of that certain Development Agreement – City of Commerce City dated July 12, 2000, by and between the City and Owner, 120<sup>th</sup> and Chambers, LLC and Northwood Village Associates, Ltd. (the “2000 Agreement”).
- B. Land Dedication for Schools. Owner shall not be liable for any cash payment or land dedication or a combination thereof to the City for public school facilities in connection with the Property which have all been previously satisfied pursuant to the terms of the 2000 Agreement.
- BC. Road Impact Fee. Upon issuance to Owner of a building permit for any structure within the Property, Owner shall pay a road impact fee to the City based on the road impact fee schedule in effect at the time of permit issuance.
- D. Drainage Impact Fee. Upon issuance to Owner of a building permit for any structure within the Property, Owner shall pay a drainage impact fee to the City based on the current drainage impact fee schedule. The Drainage Impact Fee shall be applied to improvements within the Buffalo Run Tributary to Third Creek Drainage Basin in accord with the Buffalo Run Tributary to Third Creek Master Plan.
- E. Water Acquisition Fee. Upon issuance to Owner of a building permit for any structure within the Property, Owner shall pay a water rights acquisition fee in the amount of one thousand, two hundred ninety eight dollars and nineteen cents (\$1,428.01) per living unit of each residential dwelling or non-residential structure on the Property. The amount of this water acquisition fee shall be effective for the year 2016 and shall escalate at a rate of ten percent (10%) per year effective on January 1 of each successive year, which escalation shall be applied in accordance with the year in which the building permit is issued.



**XIV. RECORDATION – COVENANT RUNNING WITH THE LAND; BINDING EFFECT**

- A. **Recording.** Upon execution hereof, Owner shall, at its sole cost and expense, cause this Agreement to be recorded in the real estate records of the Clerk and Recorder for Adams County, Colorado.
- B. **Binding Effect.**
1. This Agreement shall be binding on the parties hereto and their respective successors and assigns, without regard to the method or manner of succession or assignment, and shall be deemed and constitute a covenant running with the land.
  2. Except as provided in Section XVII below, any successor or assign of the whole, or of any part, of this Agreement shall be jointly and severally liable for performance of such portion succeeded to or assigned.
  3. This Agreement shall remain in full force and effect until all applicable provisions herein have been fulfilled.

**XV. DEFAULT – REMEDIES**

- A. In the event Owner should fail to timely comply with any of the terms, conditions, covenants and undertakings hereof (a "Default") and the Default is not cured and brought into compliance within thirty (30) days of written Notice to Owner by the City, except as provided in Section V herein, unless the City in writing designates a longer cure period reasonably requested by Developer, the City may call for payment of the Warranty.
- B. The Notice of Default shall specify the conditions of Default. During the cure period the City may withhold building permits, Certificates of Occupancy or provision of new utilities fixtures or services.
- C. Nothing hereunder shall be construed to limit the City, in the event of a Default or other breach of this Agreement, from pursuing any other remedy at law or in equity that may be appropriate under the Home Rule Charter of the City of Commerce City, the Commerce City Revised Municipal Code, applicable law and the legal standards of the State of Colorado or United States before any court of competent jurisdiction. Such remedies shall be cumulative.
- D. In the event of a Default or other breach of this Agreement, the party in Default or breach shall be liable for payment to the non-defaulting/non-breaching party of all costs and reasonable attorney fees incurred by the defaulting/breaching party as a result of the Default or breach.

**XVI. NOTICE**

Any notice that may be given under this Agreement shall be made in writing and shall be deemed effective upon personal service of the other party or upon the date of mailing by certified mail, return receipt requested, addressed as follows (or other address the party to be notified may have designated by like notice to the sender):

**OWNER:**  
120<sup>th</sup> and Buckley Associates, Ltd.  
905 W. 124<sup>th</sup> Avenue, Suite 210  
Westminster, Colorado 80234

**CITY:**  
Director, Dept. of Public Works  
City of Commerce City  
8602 Rosemary Street

Attn: Russell N. Watterson  
(720) 884-7733

Commerce City, CO 80022  
(303) 289-8170

**With copies to:**

Director, Dept. of Community Development  
City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

Director, Dept. of Parks, Recreation & Golf  
City of Commerce City  
6060 E. Parkway Drive  
Commerce City, CO 80022

City Attorney's Office  
City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

**XVII. TRANSFER AND ASSIGNMENT; ALTERNATIVE SECURITY**

- A. Assignment to District. The City and Owner acknowledge that the Property is wholly located within the service area of the Buffalo Ridge Metropolitan District, a quasi-municipal corporation and subdivision of the State of Colorado (the "District"). Pursuant to its Service Plan, the District is permitted and/or responsible to construct public infrastructure within its service area, including the Property. It is hereby agreed that Owner shall have the right to assign all or any part of its obligations under this Agreement to the District (except for the grant of any property interest required of Owner), in which event City, Owner and District shall execute such documents as may be reasonably required to evidence the assignment of all or part of Owner's obligations hereunder. Owner hereby notifies the City that it may assign to the District, and the District may assume, certain obligations of Owner relating to construction of the Infrastructure relating to the Property as described in Exhibits B - D. To the extent of any such assignment(s), Owner shall be released from any obligations under this Agreement that are so assigned to and assumed by the District at such time as the District provides the Infrastructure Security and the Landscape Security as set forth in Section II above.
- B. Assignment to Homebuilder or Developer. In addition to Owner's right to assign its obligations to the District as provided in subsection A of this Section XVII, Owner shall also have the right to assign its obligations under this Agreement to any homebuilder, developer or other successor owner who purchases the Property from Owner hereunder (a "Homebuilder"). In the event of such assignment, City, Owner and the successor Homebuilder shall execute such documents as may be reasonably required to evidence the assignment of all or part of Owner's obligations hereunder and Owner shall be released from any obligations under this Agreement that are so assigned to and assumed by a Homebuilder.

**XVIII. MISCELLANEOUS PROVISIONS**

- A. Title and Authority. Owner warrants to the City that it is (i) the record owner of the Property; (ii) authorized to execute this Agreement pursuant to a valid ground or similar lease; or (iii) acting in accordance with the currently valid and unrevoked power of attorney of the record owner attached hereto. Each individual executing this Agreement covenants and warrants that he or she is fully authorized to execute this Agreement on behalf of the party he or she represents.

- B. Compliance with Applicable Law. Owner hereby covenants and agrees that it shall comply with all applicable federal, state and local laws, ordinances and regulations.
- C. Governing Law and Venue; Recovery of Costs. This Agreement shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in the 17<sup>th</sup> Judicial District in Adams County, Colorado, and venue for federal court actions shall be in the United States District Court for the District of Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Agreement, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the non-prevailing party.
- D. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*
- E. No Waiver. The failure of the City to take timely action with respect to any breach of any term, covenant or condition hereof shall not be deemed to be a waiver of such performance by Owner, or a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.
- F. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Owner, and nothing contained in this Agreement shall give or allow any such claim to right of action by any other third person on such Agreement. It is the expressed intention of the City and the Owner that no person other than the City or Owner receiving services or benefits under this Agreement shall be deemed a beneficiary hereof.
- G. No Partnership or Agency – Independent Contractor Relationship. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the relationship between Owner and the City shall be as independent contractors, and neither the City nor Owner shall be deemed or constitute an employee, servant, agent, partner or joint venturer of the other.
- H. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.
- I. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- J. Severability. To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of this Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.
- K. Acknowledgement of Open Records Act – Public Document. Owner hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* (the “Act”), and as such, this Agreement and any exhibits or attachments hereto, and any documents or reports produced pursuant to this Agreement, are be subject to public disclosure under the Act.
- L. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all

parties. No term of this Agreement will be construed or resolved in favor of or against the City or Owner on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

- N. **Non-Appropriation.** If the City fails to appropriate sufficient funds to make any payments or satisfy any obligation of this Agreement, the Owner shall have no remedy at law or in equity to enforce the terms of this Agreement. The Parties agree and acknowledge that based on the foregoing, this Agreement does not constitute a multiple fiscal year debt or financial obligation of the City.

**[The remainder of this page intentionally left blank. Signature page(s) follow(s).]**

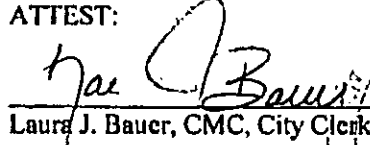
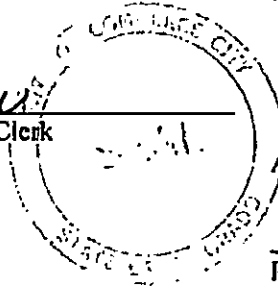
IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this AGREEMENT FOR PUBLIC IMPROVEMENTS, the parties have executed this AGREEMENT FOR PUBLIC IMPROVEMENTS as of the date first written above.

CITY OF COMMERCE CITY



Brian K. McBroom, City Manager

ATTEST:

  
Laura J. Bauer, CMC, City Clerk

Approved as to form:



Robert D. Sheesley, Senior Assistant City Attorney

Recommended for approval:



Christopher C. Cramer, Director  
Department of Community Development



Maria D'Andrea, Director  
Department of Public Works

OWNER

120<sup>TH</sup> AND BUCKLEY ASSOCIATES, LTD., a  
Colorado limited partnership

  
Russell N. Watterson, General Partner

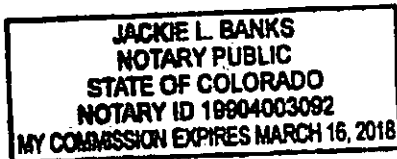
STATE OF COLORADO )

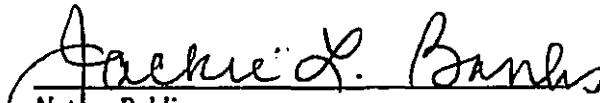
COUNTY OF ADAMS ) ss

The foregoing instrument was signed before me this 10<sup>th</sup> day of March, 2016  
by Russell N. Watterson, as General Partner of 120<sup>TH</sup> and Buckley Associates, Ltd., a Colorado limited  
partnership.

WITNESS my hand and official seal.

My commission expires 3/16/18



  
Notary Public

## **EXHIBIT B**

### **Summary of Infrastructure Improvements and schedule of estimated costs related to public roadways and storm sewers.**

1. Owner shall construct all public roadways and storm sewers as set forth on Pages 2 through 4 of this Exhibit B and as depicted in the phasing diagram as set forth in Exhibit D. Such Infrastructure Improvements shall be constructed in accordance with construction plans approved by the City (the "Construction Plans").
2. Owner shall also design and construct the western two lanes of High Plains Parkway including all required pavement, curb, gutter, sidewalk and street lights so as to allow for two-way traffic. The portion of High Plains Parkway to be designed and constructed by Owner shall include the segment proceeding from E. 118<sup>th</sup> Ave. north along the eastern boundary of the future Villages at Buffalo Run East, Filing No. 3, to E. 120<sup>th</sup> Ave. (the "High Plains Parkway Offsite Segment"). The High Plains Parkway Offsite Segment shall be designed and constructed in accordance with the City's engineering construction standards and specifications and as set forth in the Construction Plans. The cross section for the High Plains Parkway Offsite Segment shall conform with that shown in the City's transportation plan (the "Transportation Plan") for such segment. The High Plains Parkway Offsite Segment shall be constructed at the time that the Property shall require access to 120<sup>th</sup> Avenue.

Owner shall be responsible to acquire all necessary rights-of-way and easements, if needed, that are necessary to construct the Infrastructure Improvements.

3. All costs of the design and construction of the High Plains Parkway Offsite Segment as provided above shall be reimbursed to Owner by the City through road-impact fees as described in Section XIII.C of this Agreement (the "Road Impact Fees") as funds are available from such Road Impact Fees, or from other funds made available by the City. The parties shall enter into a separate reimbursement agreement which shall set forth the timing and the mechanism for the reimbursement of the Road Impact Fees to Owner by the City.
4. With the consent and approval of the City, Owner may elect to design and construct the High Plains Parkway Offsite Segment to be temporary and not conforming to the cross section shown in the City's Transportation Plan for High Plains Parkway. If Owner so elects, the cost of constructing that access road shall not be eligible for reimbursement from funds obtained from the Road Impact Fees.
5. At a point in the future the City and/or others may construct High Plains Parkway to its final width and cross section as shown in the current Transportation Plan. At that time of build-out the City shall conduct a traffic study ("Traffic Study") and to the extent that the Traffic Study warrants the need for a traffic signal at 118<sup>th</sup> Ave. and High Plains Parkway, the City may require Owner to reimburse the City for 50% of the reasonable costs of the materials and installation of such traffic signal.

If Owner does not construct and install the Infrastructure Improvements, and the Infrastructure Improvements are constructed by the City (which for all purposes under this paragraph shall include a governmental entity controlled by the City), Owner shall be responsible for the payment to the City of the portion of the cost of the Infrastructure Improvements constructed by the City which satisfy Owner's obligations under this Agreement, except to the extent that the Infrastructure Improvements would have been reimbursed

**through Road Impact Fees if constructed by Owner. If requested by the City, Owner shall enter into a reimbursement agreement or provide a satisfactory guaranty of payment. If Owner shall construct improvements that benefit a third party (including another developer), the City, at the time of that third party's final plat process, shall request that such third party enter into a reimbursement agreement with Owner for reimbursement of the costs of such improvements.**





PARAGON ENGINEERING CONSULTANTS INC.

**Exhibit B****THE VILLAGES AT BUFFALO RUN EAST - FILING NO. 6 - PHASE 1 - COST ESTIMATE - SIA**

Public Improvements					Sept. 18, 2015
WORK ITEM	QUANTITY	UNIT	COST UNIT	COST ESTIMATED	SUMMARY
<b>ROADWAY - Buffalo Run Drive</b>					
Street subgrade preparation	18,850	SY	\$1.35	\$25,447.50	
Asphalt paving, 6" full depth	9,975	SY/IN	\$2.25	\$22,443.75	
6" Vert. Curb & Gutter - Section 1B for Island	140	LF	\$8.00	\$1,260.00	
Mountable curb & gutter	5,190	LF	\$10.00	\$51,900.00	
Concrete cross pans	5,370	SF	\$6.00	\$32,220.00	
25' Curb Return (includes ped. ramp)	18	EA	\$1,500.00	\$24,000.00	
4.5' Concrete sidewalk, 4" thick	2,844	SY	\$20.00	\$56,880.00	
Handicap ramps, mid-block colored	9	EA	\$1,100.00	\$9,900.00	
Survey Monuments	18	EA	\$125.00	\$2,250.00	
Subtotal					\$226,301.25
<b>ROADWAY - Lewiston Court</b>					
Street subgrade preparation	1,260	SY	\$1.35	\$1,701.00	
Asphalt paving, 6" full depth	800	SY/IN	\$2.25	\$1,800.00	
6" Vert. Curb & Gutter - Section 1B for Island	180	LF	\$9.00	\$1,620.00	
Mountable curb & gutter	225	LF	\$10.00	\$2,250.00	
4.5' Concrete sidewalk, 4" thick	130	SY	\$20.00	\$2,600.00	
Survey Monuments	1	EA	\$125.00	\$125.00	
Subtotal					\$10,096.00
<b>ROADWAY - Mobile Court</b>					
Street subgrade preparation	1,680	SY	\$1.35	\$2,268.00	
Asphalt paving, 6" full depth	980	SY/IN	\$2.25	\$2,205.00	
6" Vert. Curb & Gutter - Section 1B for Island	180	LF	\$9.00	\$1,620.00	
Mountable curb & gutter	395	LF	\$10.00	\$3,950.00	
4.5' Concrete sidewalk, 4" thick	210	SY	\$20.00	\$4,200.00	
Survey Monuments	1	EA	\$125.00	\$125.00	
Subtotal					\$14,368.00
<b>ROADWAY - 118th Avenue</b>					
Street subgrade preparation	1,920	SY	\$1.35	\$2,592.00	
Asphalt paving, 6" full depth	1,075	SY/IN	\$2.25	\$2,418.75	
Mountable curb & gutter	610	LF	\$10.00	\$6,100.00	
4.5' Concrete sidewalk, 4" thick	305	SY	\$20.00	\$6,100.00	
Subtotal					\$17,210.75
Signage & Striping	1	LS	\$2,000.00	\$2,000.00	
Subtotal					\$2,000.00
<b>STORM SEWER</b>					
30" R.C.P.	130	LF	\$63.00	\$8,190.00	
36" R.C.P.	760	LF	\$104.00	\$79,040.00	
48" R.C.P.	140	LF	\$155.00	\$21,700.00	
Inlet, Type 'R' L=10'	2	EA	\$3,800.00	\$7,600.00	
Manhole, 5' Dia.	2	EA	\$1,700.00	\$3,400.00	
Manhole, 6' Dia.	4	EA	\$2,200.00	\$8,800.00	
Concrete End Section, 48" pipe dia.	1	EA	\$2,300.00	\$2,300.00	
Subtotal					\$131,030.00
<b>TOTAL CONSTRUCTION</b>					<b>\$401,006.00</b>



PARAGON ENGINEERING CONSULTANTS, INC.

**Exhibit B****THE VILLAGES AT BUFFALO RUN EAST - FILING NO. 6 - PHASE 2 - COST ESTIMATE - SIA**

Public Improvements					
WORK ITEM	QUANTITY	UNIT	COST UNIT	COST ESTIMATED	Sept 18, 2015 SUMMARY
<b>ROADWAY - Ouray Court</b>					
Street subgrade preparation	7,270	SY	\$1.35	\$9,814.50	
Asphalt paving, 6" full depth	3,925	SY/IN	\$2.25	\$8,831.25	
Mountable curb & gutter	2,255	LF	\$10.00	\$22,550.00	
4.5' Concrete sidewalk, 4" thick	1,130	SY	\$20.00	\$22,600.00	
Survey Monuments	4	EA	\$125.00	\$500.00	
Subtotal					\$54,295.75
<b>ROADWAY - Ouray Street</b>					
Street subgrade preparation	3,710	SY	\$1.35	\$5,008.50	
Asphalt paving, 6" full depth	1,990	SY/IN	\$2.25	\$4,477.50	
Mountable curb & gutter	1,160	LF	\$10.00	\$11,600.00	
4.5' Concrete sidewalk, 4" thick	580	SY	\$20.00	\$11,600.00	
Survey Monuments	2	EA	\$125.00	\$250.00	
Subtotal					\$32,936.00
<b>ROADWAY - E. 116th Place</b>					
Street subgrade preparation	2,170	SY	\$1.35	\$2,928.50	
Asphalt paving, 6" full depth	1,240	SY/IN	\$2.25	\$2,790.00	
Mountable curb & gutter	565	LF	\$10.00	\$5,650.00	
25' Curb Return (includes ped. ramp)	2	EA	\$1,000.00	\$2,000.00	
4.5' Concrete sidewalk, 4" thick	315	SY	\$20.00	\$6,300.00	
Handicap ramps, mid-block colored	1	EA	\$300.00	\$300.00	
Survey Monuments	2	EA	\$125.00	\$250.00	
Subtotal					\$20,219.50
Signage & Striping	1	LS	\$2,000.00	\$2,000.00	
Subtotal					\$2,000.00
<b>STORM SEWER</b>					
24" R.C.P.	70	LF	\$57.00	\$3,990.00	
30" R.C.P.	40	LF	\$63.00	\$2,520.00	
Inlet, Type "R" L=5'	2	EA	\$2,700.00	\$5,400.00	
Inlet, Type "R" L=10'	2	EA	\$3,300.00	\$6,600.00	
Subtotal					\$18,510.00
<b>TOTAL CONSTRUCTION</b>					<b>\$137,961.25</b>



PARAGON ENGINEERING CONSULTANTS, INC.

**Exhibit B****THE VILLAGES AT BUFFALO RUN EAST - FILING NO. 6 - PHASE 3 - COST ESTIMATE - SIA**

Public Improvements					Sept. 18, 2015 SUMMARY
WORK ITEM	QUANTITY	UNIT	COST UNIT	COST ESTIMATED	
<b>ROADWAY - Norfolk Street</b>					
Street subgrade preparation	1,360	SY	\$1.35	\$1,836.00	
Asphalt paving, 6" full depth	730	SY/IN	\$2.25	\$1,642.50	
Mountable curb & gutter	425	LF	\$10.00	\$4,250.00	
4.5' Concrete sidewalk, 4" thick	215	SY	\$20.00	\$4,300.00	
Survey Monuments	2	EA	\$125.00	\$250.00	
Subtotal					\$12,278.50
<b>ROADWAY - Nucka Street</b>					
Street subgrade preparation	2,240	SY	\$1.35	\$3,024.00	
Asphalt paving, 6" full depth	1,230	SY/IN	\$2.25	\$2,767.50	
Mountable curb & gutter	680	LF	\$10.00	\$6,800.00	
4.5' Concrete sidewalk, 4" thick	340	SY	\$20.00	\$6,800.00	
Survey Monuments	3	EA	\$125.00	\$375.00	
Subtotal					\$19,766.50
<b>ROADWAY - E 116th Place</b>					
Street subgrade preparation	3,150	SY	\$1.35	\$4,252.50	
Asphalt paving, 6" full depth	1,715	SY/IN	\$2.25	\$3,858.75	
Mountable curb & gutter	970	LF	\$10.00	\$9,700.00	
4.5' Concrete sidewalk, 4" thick	485	SY	\$20.00	\$9,700.00	
Survey Monuments	3	EA	\$125.00	\$375.00	
Subtotal					\$27,886.25
<b>ROADWAY - Otishe Street</b>					
Street subgrade preparation	3,065	SY	\$1.35	\$4,137.75	
Asphalt paving, 6" full depth	1,670	SY/IN	\$2.25	\$3,757.50	
Mountable curb & gutter	675	LF	\$10.00	\$6,750.00	
4.5' Concrete sidewalk, 4" thick	470	SY	\$20.00	\$9,400.00	
Survey Monuments	3	EA	\$125.00	\$375.00	
Subtotal					\$24,420.25
<b>Signage &amp; Striping</b>	1	LS	\$2,000.00	\$2,000.00	
Subtotal					\$2,000.00
<b>STORM SEWER</b>					
24" R.C.P.	695	LF	\$57.00	\$39,815.00	
30" R.C.P.	35	LF	\$63.00	\$2,205.00	
36" R.C.P.	20	LF	\$104.00	\$2,080.00	
Inlet, Type "R" L=5'	1	EA	\$2,700.00	\$2,700.00	
Inlet, Type "R" L=10'	2	EA	\$3,300.00	\$6,600.00	
Manhole, 5' Dia.	1	EA	\$1,700.00	\$1,700.00	
Subtotal					\$54,900.00
<b>TOTAL CONSTRUCTION</b>					<b>\$141,251.50</b>

**EXHIBIT C****Summary of Landscape Improvements for principal and minor arterial roadways,  
major and minor collector roadways and all private park, trail and open space areas  
(including schedule of estimated costs).**

Owner shall install and maintain in perpetuity the required Landscaping Improvements along all principal and minor arterials and major and minor collector roadways under the approved PUD Permit for this Filing. Medians within arterials shall be installed and maintained by the City.

**Opinion of Probable Cost**

Buffalo Run Filing 6  
Commerce City, Colorado  
March 24, 2016

Description	Size	Quantity	Unit Price	Total Price
<b>Tract A</b>				
<b>Site Work</b>				
3-Rail Wood Fencing		166 lf	\$16.00	\$2,656.00
<b>Landscape Materials</b>				
Deciduous Trees	2" Caliper	2 ea	\$420.00	\$840.00
Ornamental Trees	2" Caliper	1 ea	\$425.00	\$425.00
Kentucky Bluegrass Sod with Soil Preparation		3,912 sf	\$0.75	\$2,934.00
Native Seed with Soil Preparation		60,301 sf	\$0.25	\$15,075.25
<b>Irrigation</b>				
Irrigation (Pop-ups, Rotors, Drip)		3,912 sf	\$1.00	\$3,912.00
Irrigation (Native - Single Throw)		60,301 sf	\$0.50	\$30,150.50
<b>Tract A Total</b>				<b>\$56,992.75</b>
<b>Tract B</b>				
<b>Landscape Materials</b>				
Kentucky Bluegrass Sod		905 sf	\$0.75	\$678.75
Native Seed with Soil Preparation		32,609 sf	\$0.25	\$8,152.25
<b>Irrigation</b>				
Irrigation (Pop-ups, Rotors, Drip)		905 sf	\$1.00	\$905.00
Irrigation (Native - Single Throw)		32,609 sf	\$0.50	\$16,304.50
<b>Tract B Total</b>				<b>\$26,040.50</b>
<b>Tract C</b>				
<b>Site Work</b>				
4" Thick Concrete Flatwork		1,577 sf	\$6.00	\$9,462.00
Cedar Mulch		3,098 sf	\$3.50	\$10,843.00
Landscape Edger		114 lf	\$5.00	\$570.00
3-Rail Wood Fencing		135 lf	\$16.00	\$2,160.00
<b>Site Amenities</b>				
Benches		1 ea	\$1,250.00	\$1,250.00
<b>Landscape Materials</b>				
Deciduous Trees	2" Caliper	3 ea	\$420.00	\$1,260.00
Evergreen Trees	6" Height	10 ea	\$425.00	\$4,250.00
Deciduous Shrubs	#5 Container	38 ea	\$34.00	\$1,292.00
Evergreen Shrubs	#5 Container	3 ea	\$42.00	\$126.00
Ornamental Grasses	#1 Container	23 ea	\$20.00	\$460.00
Kentucky Bluegrass Sod		8,977 sf	\$0.75	\$6,732.75
Native Seed with Soil Preparation		3,409 sf	\$0.25	\$852.25
<b>Irrigation</b>				
Irrigation (Pop-ups, Rotors, Drip)		12,075 sf	\$1.00	\$12,075.00
Irrigation (Native - Single Throw)		3,409 sf	\$0.50	\$1,704.50
<b>Tract C Total</b>				<b>\$51,532.00</b>

**Tract D****Site Work**

4" Thick Concrete Flatwork	1020 sf	\$6.00	\$6,120.00
Cedar Mulch	375 sf	\$3.50	\$1,312.50
Landscape Edger	58 lf	\$5.00	\$290.00
3-Rail Wood Fencing	266 lf	\$16.00	\$4,256.00

**Site Amenities**

Benches	1 ea	\$1,250.00	\$1,250.00
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**Landscape Materials**

Deciduous Trees	2" Caliper	5 ea	\$420.00	\$2,100.00
Evergreen Trees	6' Height	3 ea	\$425.00	\$1,275.00
Ornamental Trees	2" Caliper	3 ea	\$425.00	\$1,275.00
Deciduous Shrubs	#5 Container	18 ea	\$34.00	\$612.00
Evergreen Shrubs	#5 Container	3 ea	\$42.00	\$126.00
Ornamental Grasses	#1 Container	8 ea	\$20.00	\$160.00
Kentucky Bluegrass Sod		5,403 sf	\$0.75	\$4,052.25
Native Seed with Soil Preparation		10,431 sf	\$0.25	\$2,607.75

**Irrigation**

Irrigation (Pop-ups, Rotors, Drip)	5,778 sf	\$1.00	\$5,778.00
Irrigation (Native - Single Throw)	10,431 sf	\$0.50	\$5,215.50

**Tract D Total****\$38,480.00****Tract E****Site Work**

Cedar Mulch	8,678 sf	\$3.50	\$30,368.00
Landscape Edger	70 lf	\$5.00	\$350.00

**Landscape Materials**

Deciduous Trees	2" Caliper	8 ea	\$420.00	\$3,360.00
Evergreen Trees	6' Height	7 ea	\$425.00	\$2,975.00
Ornamental Trees	2" Caliper	15 ea	\$425.00	\$6,375.00
Deciduous Shrubs	#5 Container	126 ea	\$34.00	\$4,284.00
Evergreen Shrubs	#5 Container	28 ea	\$42.00	\$1,176.00
Ornamental Grasses	#1 Container	10 ea	\$20.00	\$200.00
Perennials	#1 Container	23 ea	\$17.00	\$391.00
Kentucky Bluegrass Sod		5,332 sf	\$0.75	\$3,999.00

**Irrigation**

Irrigation (Pop-ups, Rotors, Drip)	15,008 sf	\$1.00	\$15,008.00
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**Tract E Total****\$71,884.00****Tract F****Site Work**

1-1/2" - 3" Cobblestone Mulch	33 sf	\$4.50	\$148.50
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**Landscape Materials**

Kentucky Bluegrass Sod	284 sf	\$0.75	\$213.00
Native Seed with Soil Preparation	2,383 sf	\$0.25	\$590.75

**Irrigation**

Irrigation (Pop-ups, Rotors, Drip)	284 sf	\$1.00	\$284.00
Irrigation (Native - Single Throw)	2,383 sf	\$0.50	\$1,191.50

**Tract F Total****\$2,417.75**

**Tract G****Landscape Materials**

Kentucky Bluegrass Sod	380 sf	\$0.75	\$285.00
Native Seed with Soil Preparation	2,438 sf	\$0.25	\$609.00

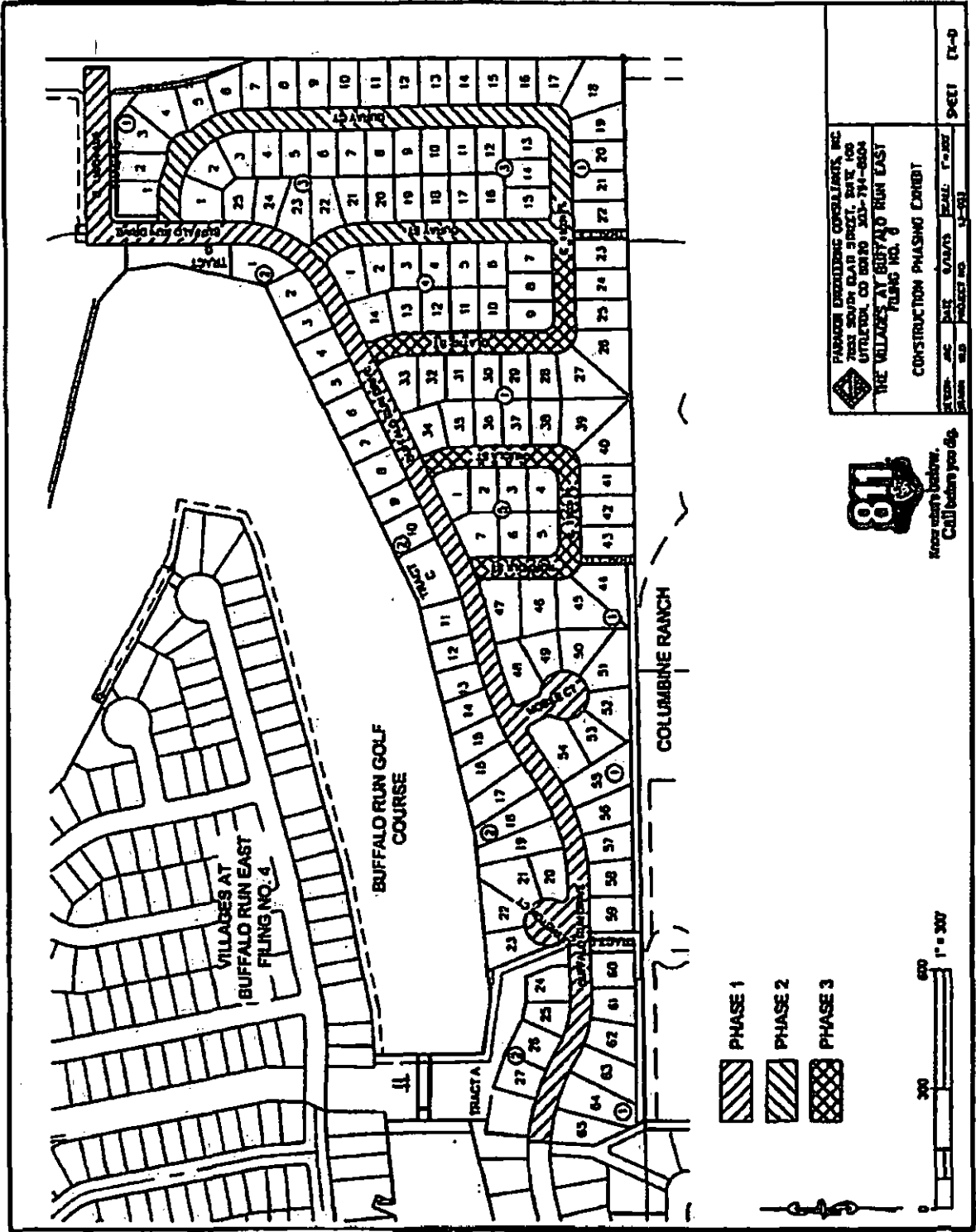
**Irrigation**

Irrigation (Pop-ups, Rotors, Drip)	380 sf	\$1.00	\$380.00
Irrigation (Native - Simple Throw)	2,438 sf	\$0.50	\$1,218.00

**Tract G Total** **\$2,492.00****Grand Total** **\$246,710.00**

EXHIBIT D

Phasing Diagram



8/31/2018 at 2:42 PM; 1 OF 24.

REC: \$128.00

TD Pgs: 0 Stan Martin, Adams County, CO.

## **EXHIBIT E**

### **August 2, 2018 Agreement for Public Improvements (Villages at Buffalo Run East, Filing No. 3)**

#### **AGREEMENT FOR PUBLIC IMPROVEMENTS**

(Villages at Buffalo Run East, Filing No. 3)

THIS AGREEMENT FOR PUBLIC IMPROVEMENTS (the "Agreement") is made and entered into effective this 31<sup>st</sup> day of August, 2018 (the "Effective Date") by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60<sup>th</sup> Avenue, Commerce City, CO 80022 (the "City"), and 120<sup>TH</sup> AND BUCKLEY ASSOCIATES, LTD., a Colorado limited partnership whose address is 905 W. 124<sup>th</sup> Avenue, Suite 210, Westminster, CO 80234 (hereinafter, "Owner").

WHEREAS, Owner owns certain real property within the City generally located at a part of Section 5, Township 2 South, Range 66 West, of the 6<sup>th</sup> P.M., City of Commerce City, County of Adams, State of Colorado, and more specifically described in Exhibit A attached hereto and incorporated herein by this reference, also known as Villages at Buffalo Run East, Filing No. 3 (the "Property");

WHEREAS, Owner intends to subdivide and/or develop the Property, the effect of which will directly impact and generate the need for on-site and off-site improvements;

WHEREAS, the City has enacted a Land Development Code (the "LDC") that, as a result of the subdivision and/or development, requires certain public improvements to be installed and/or constructed on or adjacent to the Property; and

WHEREAS, Owner acknowledges that the improvements required herein are reasonably attributable to the special impacts that will be generated by the proposed uses of the Property and that the terms and conditions set forth in this Agreement are reasonable, necessary and appropriate;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

#### **I. IMPROVEMENTS REQUIRED**

- A. Owner shall provide the improvements or other performance requirements as set forth in Exhibits B and C (collectively, the "Improvements") as follows:
  1. Exhibit B, attached hereto and incorporated herein by this reference, contains all required infrastructure improvements related to public roadways and storm sewers (the "Infrastructure Improvements").
  2. Exhibit C, attached hereto and incorporated herein by this reference, contains all required landscape improvements for principal and minor arterial roadways, major and minor collector roadways and all private park, trail and open space areas (the "Landscape Improvements").
  3. Exhibits B and C include a description of improvements and schedules of the estimated costs of improvements to be accepted by the City. In the event construction of Infrastructure Improvements and/or installation of Landscape Improvements have not begun within one (1) year of the Effective Date, Owner shall submit to the City not later than ninety (90) days prior to commencement of construction or installation, as applicable, revised Exhibits B and/or C, as appropriate, providing then-current schedules of estimated costs for the applicable Improvements.
  4. Exhibits B and C are provided for surety estimates only and shall not be used to establish construction standards or specifications. In the event of a conflict between Exhibit B or



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Exhibit C and the construction or landscape plans approved by the City, the approved plans shall govern.

- B. Owner shall, at its sole expense, design, construct and install the Improvements for initial acceptance as provided in Section IV herein ("Initial Acceptance") and shall repair the Improvements as necessary until final acceptance by the City as provided in Section V herein ("Final Acceptance").
- C. Construction and landscape plans must be approved by the City prior to commencement of construction of Infrastructure Improvements or installation of Landscape Improvements.

## II. SECURITY FOR CONSTRUCTION/INSTALLATION OF IMPROVEMENTS

### A. Security for Construction of Infrastructure Improvements:

1. Prior to commencing construction of the Infrastructure Improvements, Owner shall provide to the City cash-in-lieu, an irrevocable letter of credit or a performance surety bond payable to the City, equal to one hundred fifteen percent (115%) of the estimated cost of the Infrastructure Improvements (the "Infrastructure Security"). A bond or letter of credit shall be valid until Initial Acceptance of the Infrastructure Improvements. Any bond or letter of credit shall meet the requirements for bonds or letters of credit set forth in subsections III(D)(1-2).
2. Upon issuance of the letter of Initial Acceptance described in Section IV(A), the City shall release the Infrastructure Security so long as all releases of mechanic's lien have been filed with respect to the project and an acceptable warranty, performance guarantee as provided in Section III has been executed and delivered to the City.
3. Owner Default:
  - a. In the event Owner fails to obtain Initial Acceptance within eighteen (18) months from the commencement of construction, subject to extension at the City's sole discretion, the City may retain the Infrastructure Security and apply such funds to completion of the Infrastructure Improvements.
  - b. The City agrees to refund any portion of the Infrastructure Security not applied to completion of the Infrastructure Improvements.
  - c. The method and manner in which the City elects to construct or install the Infrastructure Improvements shall be at the sole discretion of the City, provided, however, that nothing herein shall obligate the City to install or complete the Infrastructure Improvements and nothing herein shall prevent, prohibit or limit the remedies available to the City to enforce the obligations of this Agreement.

### B. Security for Installation of Landscape Improvements:

1. In the event Owner is unable to complete the Landscape Improvements prior to Initial Acceptance of the Infrastructure Improvements due to periods of adverse weather or similar reasons approved by the City, Owner shall provide to the City cash-in-lieu, an irrevocable letter of credit or a performance surety bond payable to the City equal to one hundred twenty-five percent (125%) of the estimated cost of the uncompleted Landscape Improvements (the "Landscape Security"). Any irrevocable letter of credit or performance surety bond provided

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- by Owner shall be valid until Initial Acceptance of the Landscape Improvements. Any bond or letter of credit shall meet the requirements set forth in subsections III(D)(1-2).
2. Except as provided in subsection (B)(4) herein, the City shall release the Landscape Security only upon completion and City acceptance of all Landscape Improvements so long as all releases of mechanic's liens have been filed with respect to the Landscape Improvements and an acceptable warranty performance guarantee as provided in Section III has been executed and delivered to the City.
  3. If delayed as provided for in subsection B(1) herein, Owner shall complete the Landscape Improvements not later than eight (8) months from the date of written request by the City.
  4. **Owner Default**
    - a. In the event Owner fails to complete the Landscape Improvements within eight (8) months from the date of the City's written request, the City may retain the Landscape Security and apply such funds to completion of the Landscape Improvements.
    - b. The City agrees to refund any portion of the Landscape Security not applied to completion of the Landscape Improvements.
    - c. The method and manner in which the City elects to install the Landscape Improvements shall be at the sole discretion of the City; provided, however, that nothing herein shall obligate the City to install or complete the Landscape Improvements and nothing herein shall prevent, prohibit or limit the remedies available to the City to enforce the obligations of this Agreement.
  5. Regardless of the provisions of this Section II(B), the City shall not be responsible for maintaining the Landscape Improvements within the right-of-way of any arterial or collector roadways. The City shall maintain medians within principal and minor arterials to the extent landscaping has been installed by the City. Individual lot owners shall be required to maintain tree lawn areas as approved and installed along local roadways.

### **III. WARRANTY**

- A. Owner hereby warrants all Improvements to be free from defects, including but not limited to, defects of materials, workmanship and design and that the Improvements otherwise fully comply with all applicable City standards and specifications in effect on the date of this Agreement.
- B. Prior to Initial Acceptance of the Infrastructure Improvements, Owner shall execute and deliver to the City a warranty performance guarantee equal to fifteen percent (15%) of the total estimated cost of the Infrastructure Improvements (the "Infrastructure Warranty").
- C. Prior to Initial Acceptance of the Landscape Improvements, Owner shall execute and deliver to the City a warranty performance guarantee equal to twenty-five percent (25%) of the total cost of Landscape Improvements to include all vegetative materials, irrigation and recreation facilities (the "Landscape Warranty"). Owner shall execute the Landscape Warranty as herein provided without regard to which party completed the Landscape Improvements.
- D. The Infrastructure Warranty and the Landscape Warranty (together, the "Warranties") shall each be in the form of an irrevocable letter of credit, warranty, bond or cash escrow and shall provide security for costs that may be incurred in repairing or replacing the respective Improvements for eighteen (18) months from the date of issuance of the Initial Acceptance (the "Warranty Period").

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1. Any entity issuing a bond shall have at least an "A" rating from Moody's, or an equivalent rating as designated by a nationally recognized ratings firm, and shall be included in the most recent listing of companies holding Certificates of Authority as Acceptable sureties on Federal Bonds and as Acceptable Reinsuring Companies, Department of Treasury, Circular 570.
  2. Letters of credit shall be in a form acceptable to the City and shall be drawn on a local Colorado institution acceptable to the City.
- E. In the event any substantial repair or replacement is required to any of the Improvements during the Warranty Period and such repair or replacement is not timely made upon notice of defect, or in any event before the expiration of the Warranty Period, the City may elect to:
1. Extend the Warranty Period for up to an additional one (1) year after acceptance of the completed repair or replacement and require the Owner to extend the term of the appropriate Warranty;
  2. Call the appropriate Warranty, and secure repair or replacement of the non-conforming Improvements; and/or
  3. Order denial or suspension of outstanding building permits or Certificates of Occupancy until repair or replacement of the non-conforming Improvements has been performed and Initial Acceptance thereof has been granted by the City.

#### IV. INITIAL ACCEPTANCE.

##### A. Initial Acceptance of Infrastructure Improvements.

1. In order to obtain Initial Acceptance of Infrastructure Improvements for a phase or an entire project, Owner shall submit to the City a written request for Initial Acceptance of Infrastructure Improvements and one (1) copy of record drawings.
2. Within ten (10) business days of receipt of a request for Initial Acceptance, the City shall review the record drawings and shall either approve the drawings or return the drawings to the Owner with comments:
  - a. In the event the record drawings are returned to Owner with comments, Owner shall submit to the City the "as built" drawings revised in accord with the City's comments.
  - b. Once the record drawings are approved, Owner shall submit to the City "certified as built" drawings on Mylar and electronic AutoCAD files.
3. Within ten (10) business days of receipt of a request for Initial Acceptance of Infrastructure Improvements, the City shall inspect the Infrastructure Improvements:
  - a. During or subsequent to inspection of the Infrastructure Improvements, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City.
  - b. In the event Owner fails to correct, repair or replace the punch list items within thirty (30) days of the date of the punch list, the City shall not grant Initial Acceptance, but shall instead conduct a subsequent inspection of the Infrastructure Improvements and

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generate a new written punch list. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City.

- c. In no event shall the City grant Initial Acceptance of Infrastructure Improvements until after Owner has corrected, repaired and replaced the punch list items to the City's satisfaction.
4. Upon a finding of satisfactory completion of the Infrastructure Improvements in compliance herewith and with all applicable ordinances and standards of the City, and upon execution and delivery to the City of the Infrastructure Warranty, the City shall grant Initial Acceptance of the Infrastructure Improvements via certified letter to Owner, the date of which shall constitute the date of commencement of the Warranty Period for the Infrastructure Improvements as identified in Section III(D).
5. Building permits may be issued prior to Initial Acceptance for the phase for which the Infrastructure Security has issued provided that all required fire hydrants, water for fire suppression, curb and gutter have been constructed to City specifications and paved emergency access to the lots on which building permits are requested are satisfactory as determined by the City. Certificates of Occupancy shall not be issued prior to Initial Acceptance of Infrastructure Improvements.

B. Initial Acceptance of Landscape Improvements.

1. In order to obtain Initial Acceptance of Landscape Improvements for a phase or an entire project, Owner shall submit to the City a written request for Initial Acceptance of Landscape Improvements.
2. The City shall inspect the Landscape Improvements within a reasonable time after receipt of a request for Initial Acceptance.
  - a. During or subsequent to such inspection, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City:
    - i. Not less than thirty (30) days after the date the punch list is provided to Owner, unless Owner authorizes an earlier inspection, the City shall conduct a re-inspection of the Improvements and generate a new written punch list unless all punch list items have been corrected, repaired or replaced to the satisfaction of the City.
    - ii. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City, at which time, the City shall proceed with Initial Acceptance as set forth herein.
  - b. Failure to correct, repair or replace the punch list items as provided herein shall constitute cause to deny any request for Initial Acceptance, and in no event shall the City grant Initial Acceptance until after Owner has corrected, repaired and replaced the punch list items to the City's satisfaction.
3. Upon a finding of satisfactory completion of the Landscape Improvements in compliance herewith and with all applicable ordinances and standards of the City, and upon execution and delivery to the City of the Landscape Warranty, the City shall grant Initial Acceptance of the Landscape Improvements via certified letter to Owner, the date of which shall constitute

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the date of commencement of the Warranty Period for the Landscape Improvements as provided in Section III(D).

#### V. FINAL ACCEPTANCE

##### A. Timing for Final Acceptance:

1. Owner shall obtain Final Acceptance of the Infrastructure Improvements, as provided herein, prior to the expiration of the applicable Warranty Period.
2. Owner shall obtain Final Acceptance of the Landscape Improvements, as provided herein, prior to the expiration of the applicable Warranty Period.

##### B. Procedure for Final Acceptance. Not earlier than sixty (60) days or later than forty-five (45) days prior to the date of expiration of a Warranty Period, Owner shall submit a written request for Final Acceptance of the related Improvements.

- i. Within a reasonable time after Owner's request for Final Acceptance, the City shall conduct a final inspection of the appropriate Improvements (either Landscape or Infrastructure) or authorized phase thereof.
  - a. During or subsequent to such inspection, the City shall generate a written "punch list" of items requiring correction, repair or replacement in compliance with all applicable ordinances and standards of the City. Failure to correct, repair or replace the punch list items as provided herein shall constitute cause to deny any request for Final Acceptance.
    - i. Not less than thirty (30) days after the date the punch list is provided to Owner, unless Owner authorizes an earlier inspection, the City shall conduct a re-inspection of the Improvements and generate a new written punch list unless all punch list items have been corrected, repaired or replaced to the satisfaction of the City.
    - ii. This process shall continue until all punch list items have been corrected, repaired or replaced to the satisfaction of the City, at which time, the City shall proceed with Final Acceptance as set forth herein.
  - b. If the subdivision and/or development of the Property involves a land dedication to the City for a future park or school site, floodplain or open space (the "Dedicated Area(s)"), the City shall inspect such Dedicated Area(s). In the event any damage or dumping has occurred in, on or to any Dedicated Area, Owner shall be responsible for the restoration thereof. Despite the issuance of a Letter of Final Acceptance pursuant to this Section V, if any, the City shall not release the Landscape Warranty unless Owner has restored the Dedicated Area(s) to the City's satisfaction. Nothing herein shall be construed or deemed as requiring the City to release the Landscape Warranty prior to Final Acceptance of the Landscape Improvements.
2. Owner shall certify to the City that all persons and entities having provided labor and/or services in the construction or installation of the Improvements for which Final Acceptance is being sought have been fully paid subject to such exceptions as may be disclosed to the City and that are acceptable to the City.

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3. If the Improvements subject to the inspection request fully conform to this Agreement and the City's applicable standards and specifications, and/or all corrections, repairs or replacements have been made to bring the Improvements into conformance, the City shall issue to Owner, via certified mail, a Letter of Completion and Final Acceptance.
4. Subject to the provisions of subsection (1)(b) of this Section V(B), the City shall release the Warranty only after Final Acceptance of the Improvements related thereto.
- C. In the event Owner does not request Final Acceptance of Improvements forty-five (45) days prior to the expiration of the Warranty Period related thereto, or as extended by the City, the City shall have the right at any time thereafter to conduct a final inspection of the Improvements.
- D. If, pursuant to final inspection requested by the Owner or initiated by the City, including inspection of Dedicated Area(s), any Improvements or Dedicated Area(s) are found not to conform to the requirements of this Agreement or applicable City standards and specifications, the City may exercise any and all rights set forth in Section XV.
- E. Owner's failure to obtain Final Acceptance of Improvements prior to expiration of the Warranty Period related thereto shall constitute a Default under this Agreement, and the City may exercise its rights to secure performance as provided in Section XV.
- F. Nothing herein shall be construed or deemed as requiring the City to finally accept or release from Warranty any Improvements that are defective or damaged.

#### **VI. PHASING**

Phasing of the Improvements shall be permitted subject to the terms and conditions of this Agreement and as described and depicted on Exhibit D, attached hereto and incorporated herein by this reference. Owner, at its discretion, may modify the sequence of phase construction if approved administratively by the City. It is contemplated that the one or more phases of construction of Improvements for the Property may be performed by the Buffalo Ridge Metropolitan District and/or a Homebuilder pursuant to a partial assignment and assumption of this Agreement.

#### **VII. DEVELOPMENT STANDARDS AND PROCEDURES**

- A. **Engineering and Landscaping Services.** Owner shall procure at its sole expense all professional services, including all engineering, surveying and landscaping services, necessary and appropriate for development of the Property, which services shall fully conform to the City's applicable ordinances, standards and specifications.
  1. All professional services shall be performed by engineers, surveyors, architects or other professionals duly licensed, accredited and/or certified in accordance with applicable state and local law.
  2. Landscaping services shall be performed by persons trained in landscape architecture or horticultural design.
- B. **Plan Review.** All applicable plans must be reviewed and approved by the City prior to construction or installation. No construction or installation of Improvements shall occur without prior plan approval.

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- C. Right-of-Way Permits: Prior to commencing construction of the Improvements, Owner shall obtain all permits required under Chapter 10 of the Commerce City Revised Municipal Code, pay all fees related thereto and pay any associated City use taxes, if required.
- D. Testing: Owner shall employ at its sole expense a professional qualified, independent testing company to perform all testing of materials or construction that may reasonably be required by the City to ensure compliance with City standards and specifications. Owner shall furnish to the City certified copies of test results and shall release and authorize full access to the City and its designated representatives all work-up materials, procedures and documents used in preparing test results.
- E. Inspection: During construction or installation of the Improvements and until Final Acceptance thereof, Owner shall request and coordinate with the City all inspections of the Improvements. If the required inspections are not conducted, the City shall have the right to require Owner to remove and replace the Improvements. Owner shall reasonably cooperate and assist the City to gain access to the areas designated for inspection. Owner shall also notify the City upon discovery of any non-conformance with the approved plans, standards and specifications for the Improvements. Inspection and acceptance by the City of any Improvements shall not relieve Owner of any responsibilities under this Agreement.
- F. Erosion Control: All work associated with the installation or construction of Improvements shall conform to the City's requirements for erosion control and the approved erosion and sediment control drawings associated with the Property.
1. Owner shall, at its own expense, keep on-site and adjacent streets and rights-of-way used as construction routes clean of mud, rocks and debris at all times during construction.
  2. Within twenty-four (24) hours of verbal notification by the City of non-compliance with this subsection F, Owner shall commence clean-up operations and diligently pursue completion of such clean-up operations to the satisfaction of the City.
  3. If Owner fails to respond within 24 hours, the City is unable to contact Owner after reasonable effort, or Owner fails to diligently pursue clean-up operations to the satisfaction of the City, the City may take corrective action to clear the affected streets and rights-of-way and invoice Owner at the City's prevailing rate for which Owner shall be liable for prompt payment.

#### VIII. OBLIGATIONS OF SUBSEQUENT MORTGAGEE OR LIEN HOLDER

Any subsequent mortgagees or lien holders shall subordinate their interests in the Property to the rights and remedies of the City for purposes of this Agreement. No subsequent mortgagee or lienholder is obligated to complete any of the Improvements unless such subsequent mortgagee or lienholder becomes a successor owner and continues development of the Property by requesting permits, certificates or other approvals from the City. In such event, the Improvements shall be completed pursuant to the terms and conditions of this Agreement.

#### IX. CONTRACTORS AND SUPPLIERS - LICENSING; PAYMENT - REMOVAL OF LIENS

- A. Owner shall ensure that all contractors and/or subcontractors employed by Owner are licensed as required by state and local law before any work on the Improvements is commenced.
- B. Owner shall at all times promptly make payments of all amounts due to persons supplying labor, materials or services in connection with the Improvements and to any persons who may otherwise

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he entitled to assert a lien upon the Property by virtue of C.R.S. § 38-22-102, *et seq.*, Owner shall indemnify and defend the City with respect to any such lien and, regardless of the merits of the lien, shall immediately take any and all steps necessary to remove the lien from the Property.

#### **X. NON-LIABILITY**

Owner acknowledges that the City's review and approval of plans for the development of the Property are done in furtherance of the general public health, safety and welfare and that no specific relationship with, or duty of care to, Owner or third parties is assumed by such review approval or immunity waived as is more specifically set forth in Colorado Governmental Immunity Act, C.R.S. § 24-10-106.5.

#### **XI. INDEMNIFICATION**

Owner shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations or omissions of Owner or its employees, agents, representatives or other persons acting under Owner's direction or control in performing or failing to perform the work to be performed under this Agreement. Owner shall indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the actions or omissions of Owner and/or its employees, agents or representatives or other persons acting under Owner's direction or control. The provisions set forth in this Section shall survive the completion of the Improvements and the satisfaction, expiration or termination of this Agreement. The obligations of this Section XI shall not apply to the extent the City becomes liable by final judgment to pay a third party as the result of the negligent act or omission, error, professional error, mistake, accident or other fault of the City.

#### **XII. INSURANCE**

A: **Coverages.** Prior to beginning any work whatsoever under this Agreement including preparatory work such as surveying, staking or clearing the Property, Owner shall, at no cost to the City, procure the following coverages and maintain such coverages until all Improvements have been finally accepted:

1. Commercial General or Business Liability coverage insuring against liability for personal injury, bodily injury or death arising out of the performance of Owner's obligations under this Agreement with minimum combined single limits of One Million Dollars (\$1,000,000.00) for each occurrence and One Million Dollars (\$1,000,000.00) general aggregate.
2. Products/Completed Operations coverage insuring against any liability for bodily injury or property damage caused by the completed Improvements with a combined single limit of at least One Million Dollars (\$1,000,000.00).
3. Automobile Liability coverage with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) for any one occurrence with respect to each of Owner's owned, hired or non-owned vehicles assigned to or used in connection with the performance of Owner's obligations under this Agreement. In the event Owner's insurance does not cover non-owned vehicles, the requirements of this paragraph shall be met by each employee of Owner who uses a vehicle in connection with this Agreement, and Owner agrees to assure compliance by each employee prior to allowing use of a vehicle not owned by Owner.



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4. Workers' Compensation Insurance as required by Colorado state statute and any other insurance required by applicable law.
- B. Self-Insurance. Evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages if first approved by the City in its sole discretion.
- C. Requirements. Owner shall at a minimum procure and maintain the insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Owner pursuant to retroactive dates. Coverage for extended reporting periods shall be procured to maintain such continuous coverage.
- D. Certificates of Insurance and Endorsements.
  1. One or more Certificates of Insurance ("Certificates") shall be completed by Owner's insurance agent(s) as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, which Certificates shall be subject to review and approval by the City prior to commencement of any work under this Agreement.
  2. In the event any of the Improvements are to be constructed or installed on or within City right-of-way or other City-owned property, each insurance policy required herein, except Workers' compensation coverage, shall name the City as additional insured, and Owner shall furnish to the City all necessary endorsements evidencing the insurance coverages required by this Agreement.
  3. Completed Certificates shall be sent to:  

Risk Manager  
City of Commerce City Human Resources Department  
7887 E. 60<sup>th</sup> Ave.  
Commerce City, CO 80022

City Engineer  
City of Commerce City Public Works Department  
8602 Rosemary Street  
Commerce City, CO 80022.
  4. The City shall review the Certificates and endorsements as soon as practical, typically within ten (10) working days of receipt. The Certificates shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.
  5. In the event the period of coverage for any insurance required herein expires prior to the conclusion of Owner's obligations hereunder, Owner shall, not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the City with a new certificate of insurance and endorsements evidencing new or continuing coverage in accordance with the requirements of this Agreement.
- E. Failure to Obtain Insurance Constitutes Breach. Owner's failure to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a breach of this Agreement and, if said breach is not cured within ten (10) days of written notice by the City to Owner, the City may immediately terminate this Agreement, or at its discretion, the City may

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procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Owner to the City upon demand, or the City may offset the cost of the premiums against any monies due to Owner from the City, regardless of the source or location of such funds.

- F. Certified Copies. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Owner agrees to execute any and all documents necessary to allow the City access to any and all insurance policies and endorsements pertaining to this Agreement.
- G. Subcontracts. Owner shall include the insurance requirements set forth in this Agreement in all contracts and subcontracts entered into for the construction or installation of the Improvements. Owner shall be responsible for the failure of any such contractor or subcontractor to procure and maintain insurance meeting the requirements set forth in this Agreement. The City reserves the right to approve variations in the insurance requirements applicable to such contractors or subcontractors upon joint written request of the contractor or subcontractor and Owner if, in the City's discretion, such variations do not substantially affect the City's interests.

### XIII. FEES, CHARGES AND DEDICATIONS

Fees, charges and dedications shall be assessed pursuant to Article IX of the LDC or as amended by City Council. The fees associated with the Property are outlined as follows:

- A. Public Parks and Recreation Fees. Owner shall not be liable for any cash payment or land dedication or a combination thereof for public parks, trails and recreation facilities in connection with the Property, which have all been previously satisfied pursuant to the terms of that certain Development Agreement – City of Commerce City dated July 12, 2000; by and between the City and Owner, 120<sup>th</sup> and Chambers, LLC and Northwood Village Associates, Ltd. (the “2000 Agreement”).
- B. Land Dedication for Schools. Owner shall not be liable for any cash payment or land dedication or a combination thereof to the City for public school facilities in connection with the Property which have all been previously satisfied pursuant to the terms of the 2000 Agreement.
- C. Road Impact Fee. Upon issuance to Owner of a building permit for any structure within the Property, Owner shall pay a road impact fee to the City based on the road impact fee schedule in effect at the time of permit issuance.
- D. Drainage Impact Fee. Upon issuance to Owner of a building permit for any structure within the Property, Owner shall pay a drainage impact fee to the City based on the current drainage impact fee schedule. The Drainage Impact Fee shall be applied to improvements within the Buffalo Run Tributary to Third Creek Drainage Basin in accord with the Buffalo Run Tributary to Third Creek Master Plan.
- E. Water Acquisition Fee. Upon issuance to Owner of a building permit for any structure within the Property, Owner shall pay a water rights acquisition fee as identified in Commerce City Land Development Code, Article IX, Development Fees, Section 21-9230 Water Acquisition Fees. The amount of this water acquisition fee shall be effective for the year 2018 and shall escalate at a rate of ten percent (10%) per year effective on January 1 of each successive year, which escalation shall be applied in accordance with the year in which the building permit is issued.

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#### XIV. RECORDATION - COVENANT RUNNING WITH THE LAND: BINDING EFFECT

- A. Recording. Upon execution hereof, Owner shall, at its sole cost and expense, cause this Agreement to be recorded in the real estate records of the Clerk and Recorder for Adams County, Colorado.
- B. Binding Effect.
1. This Agreement shall be binding on the parties hereto and their respective successors and assigns, without regard to the method or manner of succession or assignment, and shall be deemed and constitute a covenant running with the land.
  2. Except as provided in Section XVII below, any successor or assign of the whole, or of any part, of this Agreement shall be jointly and severally liable for performance of such portion succeeded to or assigned.
  3. This Agreement shall remain in full force and effect until all applicable provisions herein have been fulfilled.

#### XV. DEFAULT - REMEDIES

- A. In the event Owner should fail to timely comply with any of the terms, conditions, covenants and undertakings hereof (a "Default") and the Default is not cured and brought into compliance within thirty (30) days of written Notice to Owner by the City, except as provided in Section V herein, unless the City in writing designates a longer cure period reasonably requested by Owner, the City may call for payment of the Warranty.
- B. The Notice of Default shall specify the conditions of Default. During the cure period the City may withhold building permits, Certificates of Occupancy or provision of new utilities fixtures or services.
- C. Nothing hereunder shall be construed to limit the City, in the event of a Default or other breach of this Agreement, from pursuing any other remedy at law or in equity that may be appropriate under the Home Rule Charter of the City of Commerce City, the Commerce City Revised Municipal Code, applicable law and the legal standards of the State of Colorado or United States before any court of competent jurisdiction. Such remedies shall be cumulative.
- D. In the event of a Default or other breach of this Agreement, the party in Default or breach shall be liable for payment to the non-defaulting/non-breaching party of all costs and reasonable attorney fees incurred by the defaulting/breaching party as a result of the Default or breach.

#### XVI. NOTICE

Any notice that may be given under this Agreement shall be made in writing and shall be deemed effective upon personal service of the other party or upon the date of mailing by certified mail, return receipt requested, addressed as follows (or other address the party to be notified may have designated by like notice to the sender):

OWNER:  
120<sup>th</sup> and Buckley Associates, Ltd.  
905 W. 124<sup>th</sup> Avenue, Suite 210  
Westminster, Colorado 80234

CITY:  
Director, Dept. of Public Works  
City of Commerce City  
8602 Rosemary Street

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TD Pgs: 0 Stan Martin, Adams County, CO.

Attn: Russell N. Watterson  
(720) 884-7733

Commerce City, CO 80022  
(303) 289-8170

**With copies to:**

Director, Dept. of Community Development  
City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

Director, Dept. of Parks, Recreation & Golf  
City of Commerce City  
6060 E. Parkway Drive  
Commerce City, CO 80022

City Attorney's Office  
City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

**XVII. TRANSFER AND ASSIGNMENT; ALTERNATIVE SECURITY**

- A. Assignment to District. The City and Owner acknowledge that the Property is wholly located within the service area of the Buffalo Ridge Metropolitan District, a quasi-municipal corporation and subdivision of the State of Colorado (the "District"). Pursuant to its Service Plan, the District is permitted and/or responsible to construct public infrastructure within its service area, including the Property. It is hereby agreed that Owner shall have the right to assign all or any part of its obligations under this Agreement to the District (except for the grant of any property interest required of Owner), in which event City, Owner and District shall execute such documents as may be reasonably required to evidence the assignment of all or part of Owner's obligations hereunder. Owner hereby notifies the City that it may assign to the District, and the District may assume, certain obligations of Owner relating to construction of the Infrastructure relating to the Property as described in Exhibits B - D. Upon final execution of any such assignment(s), Owner shall be released from any obligations under this Agreement that are so assigned to and assumed by the District at such time as the District provides the Infrastructure Security and the Landscape Security as set forth in Section II above.
- B. Assignment to Homebuilder or Developer. In addition to Owner's right to assign its obligations to the District as provided in subsection A of this Section XVII, Owner shall also have the right to assign its obligations under this Agreement to any homebuilder, developer or other successor owner (but not to any individual home or parcel owner within the Property), who purchases the Property from Owner hereunder (a "Homebuilder"), with the consent of the City, provided that the consent of the City will not be withheld so long as the assignee is financially capable of complying with the security requirements as set forth in Article II above. In the event of such assignment, City, Owner and the successor Homebuilder shall execute such documents as may be reasonably required to evidence the assignment of all or part of Owner's obligations hereunder and Owner shall be released from any obligations under this Agreement that are so assigned to and assumed by a Homebuilder. Owner may, without the consent of the City, assign all or a portion of its rights and obligations under this Agreement to (i) Lokal BR-3, LLC, a Colorado limited liability company, and/or (ii) Lokal Homes, LLC, a Colorado limited liability company, and upon delivery to the City of written evidence of such assignment and assumption, Owner shall be released from any obligations under this Agreement that are so assigned to and assumed by such party.

**XVIII. MISCELLANEOUS PROVISIONS.**

- A. **Title and Authority.** Owner warrants to the City that it is (i) the record owner of the Property; (ii) authorized to execute this Agreement pursuant to a valid ground or similar lease; or (iii) acting in accordance with the currently valid and unrevoked power of attorney of the record owner attached hereto. Each individual executing this Agreement covenants and warrants that he or she is fully authorized to execute this Agreement on behalf of the party he or she represents.
- B. **Compliance with Applicable Law.** Owner hereby covenants and agrees that it shall comply with all applicable federal, state and local laws, ordinances and regulations relating to its obligations under this Agreement.
- C. **Governing Law and Venue; Recovery of Costs.** This Agreement shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in the 17<sup>th</sup> Judicial District in Adams County, Colorado, and venue for federal court actions shall be in the United States District Court for the District of Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Agreement, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the non-prevailing party.
- D. **Governmental Immunity Act.** No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*
- E. **No Waiver.** The failure of the City to take timely action with respect to any breach of any term, covenant or condition hereof shall not be deemed to be a waiver of such performance by Owner, or a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.
- F. **No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Owner, and nothing contained in this Agreement shall give or allow any such claim to right of action by any other third person on such Agreement. It is the expressed intention of the City and the Owner that no person other than the City or Owner receiving services or benefits under this Agreement shall be deemed a beneficiary hereof.
- G. **No Partnership or Agency - Independent Contractor Relationship.** Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the relationship between Owner and the City shall be as independent contractors, and neither the City nor Owner shall be deemed or constitute an employee, servant, agent, partner or joint venturer of the other.
- H. **Entire Agreement.** This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.
- I. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- J. **Severability.** To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of this Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

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- K. Acknowledgement of Open Records Act – Public Document. Owner hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* (the “Act”), and as such, this Agreement and any exhibits or attachments hereto, and any documents or reports produced pursuant to this Agreement, are be subject to public disclosure under the Act.
- L. Rules of Construction. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the City or Owner on the basis of which party drafted the uncertain or ambiguous language. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.
- N. Non-Appropriation. If the City fails to appropriate sufficient funds to make any payments or satisfy any obligation of this Agreement, the Owner shall have no remedy at law or in equity to enforce the terms of this Agreement. The Parties agree and acknowledge that based on the foregoing, this Agreement does not constitute a multiple fiscal year debt or financial obligation of the City.

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IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this AGREEMENT FOR PUBLIC IMPROVEMENTS, the parties have executed this AGREEMENT FOR PUBLIC IMPROVEMENTS as of the date first written above.

CITY OF COMMERCE CITY.

*Roger Tinklenberg*  
Bryan K. McBroom, City Manager  
*Roger Tinklenberg, Acting*

ATTEST:

*Laura J. Bauer*  
Laura J. Bauer, CMC, City Clerk



Approved as to form:

*Robert L. Sheesley*  
Robert L. Sheesley, Deputy City Attorney

Recommended for approval:

*Christopher C. Cramer*  
Christopher C. Cramer, Director  
Department of Community Development

*Michelle Halstead*  
Michelle Halstead, Interim Director  
Department of Public Works

*Frank Schultz*  
Frank Schultz, Interim City Engineer  
Department of Public Works

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OWNER:

120<sup>TH</sup> AND BUCKLEY ASSOCIATES, LTD., a  
Colorado limited partnership


  
Russell N. Watterson, General Partner:

STATE OF COLORADO )  
COUNTY OF Adams )ss

The foregoing instrument was signed before me this 2<sup>nd</sup> day of August, 2018  
by Russell N. Watterson, as General Partner of 120<sup>TH</sup> and Buckley Associates, Ltd., a Colorado limited  
partnership.

WITNESS my hand and official seal.

My commission expires March 19, 2022

  
Notary Public





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**EXHIBIT A**

**Property Legal Description**

LOTS 1 THROUGH 50, BLOCK 1,  
LOTS 1 THROUGH 24, BLOCK 2,  
LOTS 1 THROUGH 16, BLOCK 3,  
LOTS 1 THROUGH 45, BLOCK 4,  
LOTS 1 THROUGH 20, BLOCK 5,  
LOTS 1 THROUGH 17, BLOCK 6,

TRACTS B THROUGH J, INCLUSIVE

THE VILLAGES AT BUFFALO RUN EAST FLING NO. 3, AMENDMENT NO. 1  
COUNTY OF ADAMS, STATE OF COLORADO

8/31/2018 at 2:42 PM, 19 OF 24,

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**EXHIBIT B**

Summary of Infrastructure Improvements and schedule of estimated costs related to public roadways and storm sewers.

**Internal Roads**

Owner shall construct all public roadways and storm sewers internal to Filing 3 as set forth in the approved construction documents. Such Infrastructure Improvements shall be constructed in accordance with construction plans approved by the City (the "Construction Plans").

**High Plains Parkway**

The Owner shall construct curb and gutter and concrete sidewalk along the subdivision frontage from 118<sup>th</sup> Avenue north to the Filing 3 Commercial lot boundary. The curb and gutter and sidewalk shall be placed in the ultimate location within the Principal Arterial cross section. The Owner shall also provide landscaping between the subdivision boundary (ROW) and the proposed sidewalk from 118<sup>th</sup> Avenue to the Filing 3 Commercial lot boundary.

The Owner shall pay three hundred five thousand and five hundred dollars (\$305,500), which constitutes fifty percent (50%) of the cost of the traffic signal to be placed at 118th Ave. and High Plains Parkway, including costs for materials, design and installation, on the one-hundred eighty-first (181st) day after the Effective Date of the Agreement unless otherwise agreed to in writing by the Parties and executed in the same manner as this Agreement. This payment shall also satisfy Owner's traffic signal contribution as set forth in Exhibit B, paragraph 5 of the Agreement for Public Improvements (Villages at Buffalo Run East, Filing No. 6), dated March 23rd, 2016, by and between the City of Commerce City and 120th and Buckley Associates, LTD, as amended.

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TD Pgs: 0 Stan Martin, Adams County, CO

## SCHEDULE OF ESTIMATED COSTS -- EXHIBIT B

Date June 25, 2018

WORK ITEM	QUANTITY	UNIT	UNIT COST	ESTIMATED COST
<b>EROSION CONTROL</b>				
Concrete Washout	1	EA	\$2,000.00	\$2,000.00
Inlet protection	16	EA	\$600.00	\$3,600.00
Refresh Inlet protection	36	EA	\$300.00	\$10,800.00
Seeding and Mulching	14.3	AC	\$1,000.00	\$14,300.00
Stabilized Staging Area	1	EA	\$1,500.00	\$1,500.00
Perimeter Silt Fence	7200	LF	\$1.75	\$12,600.00
Back of Curb Silt Fence Reinforced (Public Streets)	7240	LF	\$2.00	\$14,480.00
Back of Curb Silt Fence Reinforced (Alleys)	8500	LF	\$2.00	\$17,000.00
Weekly Street Sweeping	12	EA	\$500.00	\$6,000.00
Vehicle tracking pad	2	EA	\$3,000.00	\$6,000.00
Subtotal				\$88,280.00
<b>DEMO</b>				
REMOVE EXISTING 48" RCP & FES	30	LF	\$100.00	\$3,000.00
Subtotal				\$3,000.00
<b>STORM SEWER</b>				
24" Reinforced Concrete Pipe (RCP)	143	LF	\$85.00	\$12,155.00
30" Reinforced Concrete Pipe (RCP)	51	LF	\$103.00	\$5,253.00
48" Reinforced Concrete Pipe (RCP)	1382	LF	\$195.00	\$269,490.00
72"x48" Reinforced Concrete Pipe (RCB)	621	LF	\$450.00	\$279,450.00
10' Type "R" Inlet	5	EA	\$9,700.00	\$48,500.00
6" Dia Manhole	8	EA	\$3,500.00	\$28,000.00
24" Plug	2	EA	\$500.00	\$1,000.00
Box Base MH	2	EA	\$5,000.00	\$10,000.00
Box Base MH with grate top	1	EA	\$6,000.00	\$6,000.00
Tie to existing 72"x48" Reinforced Concrete Pipe (RC)	1	EA	\$500.00	\$500.00
42" Reinforced Concrete Pipe (RCP) in alley	201	LF	\$160.00	\$32,160.00
10' Type "R" Inlet in alley	1	EA	\$9,700.00	\$9,700.00
Subtotal				\$702,208.00

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<b>IRRIGATION - NON POTABLE</b>				
4" PVC C-900, Class 150	3634	LF	\$25.00	\$90,850.00
12"X12"X4" Cut in Tee	1	EA	\$3,000.00	\$3,000.00
4" Bends	26	EA	\$400.00	\$10,400.00
4" Depressions	1	EA	\$3,800.00	\$3,800.00
4" Gate Valve	6	EA	\$800.00	\$4,800.00
4" Tee	3	EA	\$600.00	\$1,800.00
Remove 4" plug and connect	1	EA	\$1,000.00	\$1,000.00
Subtotal				\$115,650.00
<b>CONCRETE</b>				
C&G subgrade preparation	2681	SY	\$2.25	\$6,032.73
Sidewalk subgrade preparation	3420	SY	\$2.25	\$7,695.00
Mountable Curb & Gutter	7240	LF	\$25.00	\$181,000.00
4.5" Concrete sidewalk, 4" thick	6840	LF	\$22.50	\$153,900.00
Hand-Cap Ramps	6	EA	\$3,000.00	\$18,000.00
Mid-Block Ramps	1	EA	\$2,250.00	\$2,250.00
Mobilization	1	EA	\$5,000.00	\$5,000.00
Subtotal				\$373,877.73
<b>PAVING</b>				
Street subgrade preparation	15536	SY	\$3.00	\$46,608.00
Asphalt (7" Thick)	15536	SY	\$30.00	\$466,080.00
Manhole Adjustments	24	EA	\$500.00	\$12,000.00
Water Valves Adjustments	31	EA	\$200.00	\$6,200.00
Mobilization	1	EA	\$5,000.00	\$5,000.00
Subtotal				\$535,888.00
<b>SIGNAGE</b>				
Signage and Striping	1	LS	\$10,000.00	\$10,000.00
Subtotal				\$10,000.00
<b>GRADING</b>				
Dirt Haul In	35469	CY	\$5.00	\$177,345.00
Spread and compact fill	35469	CY	\$2.50	\$88,672.50
Subtotal				\$266,017.50
<b>SUBTOTAL CONSTRUCTION</b>				<b>\$2,094,921.23</b>
CONTINGENCIES @ 10.0%				\$209,492.12
<b>TOTAL</b>				<b>\$2,304,413.35</b>

**EXHIBIT C**

**Summary of Landscape Improvements for principal and minor arterial roadways,  
major and minor collector roadways and all private park, trail and open space areas  
(including schedule of estimated costs):**

Owner shall install and maintain in perpetuity the required Landscaping Improvements along all principal and minor arterials and major and minor collector roadways under the approved PUD Permit for this Filing. Medians within arterials shall be installed and maintained by the City.

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**Exhibit C - Buffalo Run Filling No. 3**  
**Utility Cost / Quantity Estimate**

Date June 14, 2018

WORK ITEM	QUANTITY	UNIT	UNIT COST	ESTIMATED COST
<b>LANDSCAPING</b>				
Sidewalk subgrade preparation	3537	SY	\$2.25	\$7,958.75
5' Concrete sidewalk, 4" thick	6367	LF	\$25.00	\$159,175.00
Tree (Deciduous or Evergreen)	78	EA	\$600.00	\$46,800.00
Shrub	428	EA	\$75.00	\$32,100.00
Perennials & Grasses	1174	EA	\$22.00	\$25,828.00
Canopy Trees	171	EA	\$1,000.00	\$171,000.00
Irrigated Turf Grass	193841	SF	\$1.10	\$213,225.20
Native Grass Seed Mix	10672	SF	\$0.10	\$1,067.19
Irrigation	250000	SF	\$1.25	\$312,500.00
Shredded Hardwood Mulch (3" Deep)	499	CY	\$80.00	\$39,920.00
Rock Mulch Type 1 (3" Deep)	298	CY	\$150.00	\$44,700.00
Rock Mulch Type 2 (3" Deep)	341	CY	\$150.00	\$51,150.00
Commercial Grade Plastic or Fiberglass Edging	14292	LF	\$2.50	\$35,730.00
Amended Soil, Furnish & Place	997	CY	\$80.00	\$79,760.00
Small Gateway Trellis	13	EA	\$4,000.00	\$52,000.00
Bike Rack with Concrete Pad	1	EA	\$850.00	\$850.00
Picnic Table	2	EA	\$2,000.00	\$4,000.00
Basketball Court, Complete	1	LS	\$28,000.00	\$28,000.00
Subtotal				\$1,305,764.14
<b>FENCING AND MONUMENTATION</b>				
Split Rail Fence	1748	LF	\$25.00	\$43,700.00
Subtotal				\$43,700.00
<b>SUBTOTAL CONSTRUCTION</b>				<b>\$1,349,464.14</b>
<b>CONTINGENCIES @ 10.0%</b>				<b>\$134,946.41</b>
<b>TOTAL</b>				<b>\$1,484,410.55</b>

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EXHIBIT D

Phasing (If Applicable)

Phasing N/A.