

DEVELOPER'S AGREEMENT

THIS AGREEMENT, dated January 25, 2022, (the effective date of this Agreement), is entered into between the City of Brookings, a municipal corporation of the State of South Dakota and the County of Brookings, (referred to as the "City" herein), and Prairie Hills LLC, a South Dakota Limited Liability Company, with its principal office located at Brookings, South Dakota 57006, (referred to herein as the "Developer").

Whereas, the City of Brookings created Tax Increment ("TIF") District Number Eleven (11), the legal description and map of TIF District is attached, marked Exhibit "A" and made a part hereof; and

Whereas, Tax Increment received by the City for TIF District No. 11 will be used to assist in providing for certain TIF project costs; and

Whereas, the City hereby establishes certain requirements applicable to the development in exchange for tax increment funds used for infrastructure abutting and serving commercial lots within TIF District Number 11.

NOW, THEREFORE, in consideration of the mutual covenants contained in this agreement, the parties, for themselves, their successors and assigns, hereby agree as follows:

- 1. Agreements Relating to Installation of Roads, Curbing, Pavements, Fire Hydrants, Water and Waste Water.** The Developer shall construct, except as provided in Section 2 below, all roads, curbing, pavement and other improvements, including all catch basins and drainage facilities, monuments, and other improvements of any nature whatsoever as set forth in the TIF #11 Project Plan and approved by the City, and in a manner consistent with the construction plans reviewed and approved by the City Engineer, and in accordance with all present state and local laws, present improvement ordinances and regulations of the City of Brookings, South Dakota. Developer shall, in all respects, complete the subdivision in accordance with all maps, plans and specifications on file with the City and all local laws, ordinances and regulations.
- 2. Tax Increment District Number Eleven Project Costs.** The Developer shall undertake and construct such public improvements as are set forth in Tax Increment District Number Eleven project plan, with TIF reimbursement based on actual project costs, with reimbursement to the Developer not to exceed the sum of One Million Dollars (\$1,000,000). The City of Brookings will only reimburse Developer the actual costs per itemized construction contracts, and the total reimbursement to Developer of construction costs with TIF proceeds as they are received shall not to exceed an aggregate amount of \$1,000,000.

The City shall undertake and construct certain public improvements within the 20th Street South and Medary Avenue right-of-ways and associated drainage facilities as are set forth in Tax Increment District Number Eleven project plan in an amount not to exceed Tax Increment District Number Eleven project plan eligible project costs net of any reimbursements to Developer under Section 2 of this Agreement. The total sum of eligible

project costs, including reimbursements to Developer pursuant to this Agreement, which shall not exceed the sum of Four Million, Five Hundred Thousand Dollars (\$4,500,000.00).

- 3. Bidding of Public Improvements by Developer.** Upon review and approval by the City and Brookings Municipal Utilities of the construction plans and specifications for the public improvements as detailed in the TIF #11 Project Plan, Developer agrees to competitively bid the project improvements through Banner Associates, Developer's consulting engineer. The consulting engineer shall be responsible for advertising the project for bid, accepting sealed bids, and providing bid tabulations to the satisfaction of the City Engineer for review and approval prior to awarding such bid to the lowest responsible bidder. Consulting engineer shall provide to the City Engineer copies of all advertising notices, plan holders lists, and any direct marketing efforts such as mailings, email, telephone solicitations as proof of obtaining competitive bids for the public improvements.
- 4. Bidding of Public Improvements by City.** The City will be responsible for the design, competitive bidding, construction and payment of public improvements relative to the 20th Street South and Medary Avenue drainage improvements, street re-construction, and associated improvements and any pedestrian pathways or trails deemed necessary.
- 5. Acceptance of Improvements.** The City shall not be responsible for road or other improvements, or road maintenance or care until the same shall be accepted by the City; nor shall the City exercise any control over the improvements until accepted. Upon the proper completion of these improvements and their approval by the City Engineer, and if these improvements then comply with all present State laws, City ordinances and planning board rules, regulations and requirements, the City will then accept the improvements.
- 6. Public Right-of-Ways.** The City represents that it has good title to the roads and public ways in which the Developer will install such improvements, and agrees that the roadways and easements as provided in its preliminary and final plats on file with the City have been properly dedicated, and that all improvements and roads as required by the City and agreed to by the Developer in the TIF#11 Project Plan, including waste water infrastructure, water mains, hydrants and other appurtenances shall, upon completion and acceptance by the City, become the property of the City.
- 7. General Requirements.** It is agreed by Developer that Developer shall complete the work to be performed hereunder within 12 months from the date of this Agreement, unless the time is extended by the City, which extension shall not be unreasonably withheld.
- 8. Run with the Land.** This agreement shall run with the land, as shall also the covenants herein contained, and shall be for the benefit of the City.
- 9. Guarantee.** The Developer agrees to pay for all the public improvements, subject to reimbursement with Tax Increment received by the City for TIF District Number 11 as set forth in Section 2 above. It is understood that if there is not sufficient Tax Increment received by the City for TIF District Number 11 for the Developer's project costs under this Agreement that the City will not be responsible for any shortfall.

- 10. Tax Increment Revenue.** The Developer and the City agree to share equally in the Tax Increment Revenue as it is received, subject to the maximum payment provision to Developer, with such revenue to be utilized to pay for public improvements as described in this Agreement, until such time as the improvements have been paid in full or the district is decertified per state law. The use of Tax Increment revenue to reimburse developer shall be based upon actual construction costs, with a not to exceed amount of \$1,000,000 for the Developer's improvements. After the Developer has been fully reimbursed for its actual costs (not to exceed the lesser of \$1 Million Dollars or actual costs), all remaining TIF funds shall be retained by the City to pay the City's Project Costs under TIF Number 11.
- 11. Payment Agent.** The City will act as the paying agent of the Tax Increment Revenue to the Developer.
- 12. Draw Down.** The City and Developer agree Tax Increment received by the municipality for TIF District No. 11 shall be used to reimburse Developer in accordance with this Agreement to the extent revenue is available in the Tax Increment Financing District #11 Fund once the following have been completed:
- 12.1** Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the improvements described herein have been made consistent with the Tax Increment Financing District #11 Project Plan and this Agreement.
- 12.2** Developer shall have submitted invoices showing services / improvements have been made.
- 13. Maintenance until Acceptance.** The Developer shall maintain, clean and snowplow Tallgrass Parkway and Sweetgrass Drive within the District until these roads have been accepted by the City. In the event of default of these obligations by the Developer, the City without notice to the Developer, may do the same at the expense of the Developer.
- 14. Mechanics Liens.** The Developer agrees to immediately satisfy any and all mechanic's or materialman's liens that arise as a result of the public improvements specified in Section 2 above. This provision shall not prevent Prairie Hills LLC, from subsequently seeking compensation from a contractor, subcontractor or others who may be responsible for such liens or for such payment.
- 15. Discretionary Tax Formula.** The City agrees the Developer shall be eligible for the discretionary tax formula on platted lots within Brookings County in accordance with Brookings County discretionary tax formula policies and procedures during the duration of Tax Increment Financing District #11.
- 16. Agreement Among Parties.** This document, along with the Project Plan for Tax Increment Financing District Number Eleven, shall constitute the entire agreement of the parties. All prior discussions and negotiations are merged into the Project Plan and this Developer's Agreement. In the event of a conflict between the Project Plan and this Agreement, this Agreement shall be controlling. Any changes or addendums hereto shall be agreed to in writing by both parties.

17. Litigation. Any dispute arising out of or related to this Agreement shall be litigated in the Third Judicial Circuit Court for the State of South Dakota, located in Brookings, Brookings County, South Dakota.

18. Default; Remedies; Termination. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by Developer to perform any term or provision of this Agreement will constitute a default. In the event of default or breach of any terms or conditions of this Agreement, the City will give Developer not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the Developer will not be considered in default for purposes of termination of this Agreement or the institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the City may, at its option:

1. Terminate this Agreement and terminate payments of Tax Increment received for TIF District Number 11, regardless if there are any outstanding and unreimbursed project costs resulting from improvements described in this Agreement; and/or
2. Institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for specific performance of the terms of this Agreement.

CITY OF BROOKINGS, SD

ATTEST:

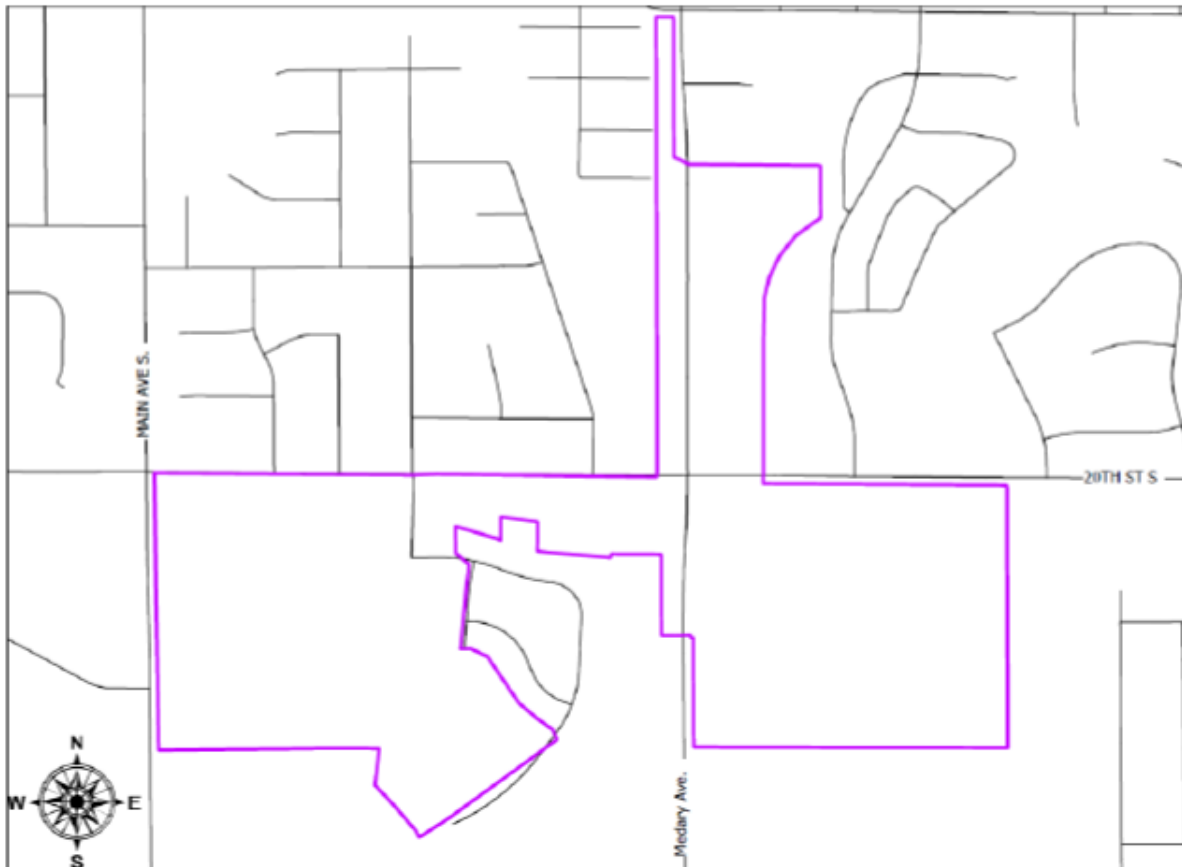
Oepke G. Niemeyer, Mayor

Bonnie Foster, City Clerk

PRAIRIE HILLS LLC

Its: _____

Exhibit A



Legal Description of TIF District No. 11

N 1780' of NE ¼ EXC E 375' & EXC Platted Areas in Section 2-T109N-R50W and abutting rights-of-way,

Block 3A, Prairie Hills Addition and abutting road rights-of-way,

Lot 2, Block 1, Prairie Hills Addition and abutting road rights-of-way,

Block 1, Trail Addition and abutting road rights-of-way,

N 490' of Block 2, Trail Addition and abutting road rights-of-way,

Substation Addition and abutting road rights-of-way,

NW ¼ NW ¼ EXC Platted Areas in Section 1-T109N-R50W and abutting road rights-of-way,

Block 1, Nelson Fifth Addition and abutting road rights-of-way,

Block 3, McClemons Addition and abutting road rights-of-way.