

**SERVICE PLAN**

**FOR**

**PRAIRIESTAR METROPOLITAN DISTRICT NO. 1**

**TOWN OF BERTHOUD, COLORADO**

Prepared

by

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**LIST OF EXHIBITS**

<b>EXHIBIT A-1</b>	Legal Description of District Boundaries
<b>EXHIBIT A-2</b>	Legal Description of Inclusion Area
<b>EXHIBIT B</b>	Vicinity Map
<b>EXHIBIT C-1</b>	District Boundary Map
<b>EXHIBIT C-2</b>	Inclusion Area Boundary Map
<b>EXHIBIT D</b>	Intergovernmental Agreement

## I. INTRODUCTION

### A. Purpose and Intent.

This Service Plan is being submitted for the PrairieStar Metropolitan District No. 1. The District is being formed in conjunction with the PrairieStar Metropolitan District No. 2, the PrairieStar Metropolitan District No. 3, and the PrairieStar Metropolitan District No. 4. It is anticipated that the Districts will each function as a separate district, but will work in cooperation to service the Project, as hereinafter defined.

The District is an independent unit of local government, separate and distinct from the Town, as hereinafter defined, and, except as may otherwise be provided for by the State, as hereinafter defined, or local law or this Service Plan, its activities are subject to review by the Town only insofar as they may deviate in a material manner from the requirements of the Service Plan or the Intergovernmental Agreement between the Town and the District. It is intended that the District will provide a part or all of the Public Improvements, as hereinafter defined, for the use and benefit of the inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements.

### B. Need for the District.

There are currently no other governmental entities, including the Town, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project, as hereinafter defined. The District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economical manner possible.

### C. Objective of the Town Regarding District's Service Plan.

The Town's objective in approving the Service Plan for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt, as hereinafter defined, to be issued by the District. All Debt is expected to be repaid by taxes, fees, rates tolls and other legally available revenues, as further set forth in the Service Plan. No debt service mill levy shall be imposed and collected at a level higher than the Maximum Debt Mill Levy, as hereinafter defined, for commercial and residential properties. Debt that is issued within these parameters, as further described in the Financial Plan, as hereinafter defined, will insulate property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Service Plan is intended to establish both a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Operational and maintenance activities are allowed, but only as authorized by the Intergovernmental Agreement.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from tax revenues and other legally available revenue collected from a mill levy which shall not exceed the Maximum Debt Mill Levy on commercial and residential properties. It is the intent of this Service Plan to assure to the extent possible that no commercial or residential property bear an economic burden that is greater than that associated with the Maximum Debt Mill Levy even under bankruptcy or other unusual situations. Generally, the costs of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

## **II. DEFINITIONS**

In this Service Plan, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Approved Development Plan: means a development plan or other process established by the Town for identifying, among other things, Public Improvements necessary for facilitating development of property within the Service Area as approved by the Town pursuant to the Development Code and as amended, pursuant to the Development Code, from time to time.

Board: means the board of directors of the District.

Board of Trustees: means the Board of Trustees of the Town of Berthoud, Colorado.

Bond, Bonds or Debt: means bonds or other obligations for the payment of which the District has promised to impose an *ad valorem* property tax mill levy, and other refunding and similar obligations of the District related to the Public Improvements.

Development Code: means the Development Code of the Town of Berthoud, Colorado.

District: means PrairieStar Metropolitan District No. 1.

Districts: means the District, the PrairieStar Metropolitan District No. 2, the PrairieStar Metropolitan District No. 3, and the PrairieStar Metropolitan District No. 4, collectively.

External Financial Advisor: means a consultant that: (i) advises Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District and has not been otherwise engaged to provide services in connection with the transaction related to the applicable Debt.

Financial Plan: means the Financial Plan of the District as described in Section VI, which describes (i) how the Public Improvements are to be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

Inclusion Area Boundaries: means the boundaries of the area described in the Inclusion Area Boundary Map.

Inclusion Area Boundary Map: means the map attached hereto as **Exhibit C-2**.

Intergovernmental Agreement: means the intergovernmental agreement attached hereto as Exhibit D between the District and the Town of Berthoud, Colorado.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map attached hereto as **Exhibit C-1**, describing the District's initial boundaries.

Maximum Debt Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VI.C below.

Project: means the development or property commonly referred to as PrairieStar.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Special District Act, except as specifically limited in Section V below, to serve the future taxpayers and inhabitants of the Service Area, as determined by the Board.

Service Area: means the property within the Initial District Boundary Map and the Inclusion Area Boundary Map.

Service Plan: means this service plan for the District as approved by the Board of Trustees.

Service Plan Amendment: means an amendment to the Service Plan as approved by the Board of Trustees in accordance with the Town's ordinances and the applicable State law.

Special District Act: means Section 32-1-101, et seq., of the Colorado Revised Statutes, as amended from time to time.

State: means the State of Colorado.

Taxable Property: means real or personal property within the Service Area subject to *ad valorem* taxes imposed by the District.

Total Debt Issuance Limitation: means the total amount of Debt that the Districts may issue as set forth in Section V.A.8 below.

Town: means the Town of Berthoud, Colorado.

### **III. BOUNDARIES**

The area of the Initial District Boundaries includes approximately Four Hundred (400) square feet and the total area proposed to be included in the Inclusion Area Boundaries is approximately One Hundred Ninety and Four Hundred Eighty-Three Thousandths (190.483) acres. A legal description of the Initial District Boundaries is attached hereto as **Exhibit A-1** and a legal description of the Inclusion Area Boundaries is attached hereto as **Exhibit A-2**. A vicinity map is attached hereto as **Exhibit B**. A map of the Initial District Boundaries is attached hereto as **Exhibit C-1**, and a map of the Inclusion Area Boundaries is attached hereto as **Exhibit C-2**. It is anticipated that the District's boundaries may change from time to time as it undergoes inclusions and exclusions pursuant to Section 32-1-401, et seq., C.R.S., and Section 32-1-501, et seq., C.R.S., subject to the limitations set forth in Article V below.

### **IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION**

The Service Area consists of approximately One Hundred Ninety and Four Hundred Eighty-Three Thousandths (190.483) acres of land. The current assessed valuation of the Service Area is \$-0- for purposes of this Service Plan and, at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The estimated assessed valuation of the Service Area at build out, subject to the following assumptions and qualifications, is estimated to be Forty Five Million Two Hundred Fifty Thousand Dollars (\$45,250,000). The foregoing estimated assessed valuation is based upon certain present day assumptions with regard to the District's ability to issue Debt; the ability of the developers of the Project to finance, construct, sell, lease and operate the Project; appreciation of real property values, population figures and other assumptions. The estimated assessed valuation is conditioned, and will be dependant, upon market and economic factors wholly outside the control of the District. The estimated assessed valuation is an estimate only; the District makes no guarantees, warranties or representations with regard to the estimated assessed valuation. The population of the District at build-out is estimated to be approximately Two Thousand One Hundred Thirty-Five (2,135) people.

Approval of this Service Plan by the Town does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Service Plan or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

### **V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES**

#### **A. Powers of the District and Service Plan Amendment.**

The District shall have the power and authority to plan for, design, acquire, construct, install, relocate, redevelop, provide and finance the Public Improvements and related operation and maintenance services within and without the boundaries of the District as such power and authority is described in the Special District Act and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.



1. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop, provide and finance the Public Improvements. It is not the District's intention to own any Public Improvements that are of the type that would normally be dedicated to the Town or other governmental entities. The District shall dedicate the Public Improvements to the appropriate jurisdiction in a manner consistent with the Approved Development Plan and other rules and regulations of the Town and applicable provisions of the Development Code.

Those Public Improvements that are not conveyed to the Town, or other governmental entities, may be conveyed to an owners association, as appropriate. With regard to those Public Improvements that will be dedicated to an owners association, the District shall undertake the operations and maintenance responsibilities for the improvements until such time as they are accepted by an owners association. The District is expected to undertake all ownership, operations and maintenance responsibilities for the Public Improvements that are not conveyed to the Town or other governmental entities, or an owners association, as appropriate, and will do so either itself or by contract with an owners association(s). Additionally, the District shall be authorized to provide ongoing services related to the maintenance of landscaping improvements and related to covenant enforcement, as provided under Section 32-1-1004(8)(a), C.R.S. During the period that the District operates any such facilities, revenue to pay the expenses of operations may be obtained from fees legally imposed by the District or other legally available revenues of the District. User fees for use of recreational facilities may be different for residents of the District than for outside users. Approval of this Service Plan by the Town constitutes the Town's agreement that the District may perform these functions.

2. Acquisition of Land for Public Improvements and Easements. The District agrees to acquire by easement, plat dedication, condemnation (subject to the limitation set forth in Section V.A.3), or cause the dedication to the Town of all land required by the Town for construction of Public Improvements being provided by the District that will be conveyed to the Town. Exceptions must be approved by the Town in writing. Failure to comply with this provision shall be deemed to be a material modification of this Service Plan.

3. Eminent Domain Limitation. The District may exercise its powers of eminent domain, as allowed under the Special District Act, with regard to any land located within the Inclusion Area Boundaries, but shall not exercise such powers with regard to any land located outside of the Inclusion Area Boundaries without the prior written consent of the Town, which consent may be withheld for any reason within the Town's discretion.

4. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the Town or other governmental entities having proper jurisdiction. The District will obtain the Town's approval of civil engineering plans and will obtain applicable permits for the construction and installation of Public Improvements prior to performing such work.

5. Privately Placed Debt Limit: Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

6. Inclusion Limitation. The District shall not include within its boundaries any property outside the Service Area without the prior written consent of the Board of Trustees. The District shall not include within any of its boundaries any property inside the Inclusion Area boundaries without the prior written consent of the Town except upon petition of the fee owner or owners of one hundred percent of such property as provided in Section 32-1-401(1)(A), C.R.S.

7. Overlap Limitation. The boundaries of the Districts shall not overlap unless the aggregate mill levy for payment of Debt of the overlapping Districts will not at any time exceed the Maximum Debt Mill Levy of the District. Additionally, the District shall not consent to the organization of any other district organized under the Special District Act within the Service Area that will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District, provided, however, if the Town requests an overlap with a Town-initiated district, the aggregate mill levy rate for the payment of Debt shall not include any mill levy of such Town-initiated district.

8. Total Debt Issuance Limitation. The Districts shall not issue Debt in excess of the Total Debt Issuance Limitation, which shall be Thirty Eight Million One Hundred Fifty Thousand Dollars (\$38,150,000); provided, however, that none of the following shall be included within, or be counted towards or against, the Total Debt Issuance Limitation: (a) pledges of revenue between and among the Districts supporting the repayment of Debt, the cost sharing of the funding of improvements, and/or the operations and maintenance of improvements; (b) agreements, guarantees and similar obligations entered into by any of the Districts that underlie the provision of credit enhancement with regard to the issuance of Debt; and (c) any refunding of any Bond, Bonds or Debt.

9. Monies from Other Governments/Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the Town is eligible to apply for, except pursuant to an intergovernmental agreement. This Section shall not apply to specific ownership taxes which shall be distributed to and a revenue source for the District without any limitation.

10. Consolidation Limitation. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the Town, unless such consolidation is with one or more of the Districts.

11. Bankruptcy Limitation. All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Debt Mill Levy, have been established under the authority of the Town to approve a Service Plan with conditions, pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(b) Are, together with all other requirements of Colorado law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or that results in a pledge, that exceeds the Maximum Debt Mill Levy, shall be deemed a material modification of this Service Plan pursuant to Section 32-1-207, C.R.S., and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the Town as part of a Service Plan Amendment.

12. Additional Services. In addition to the other powers of the District set forth in this Section V, the District shall also have the power and authority to, but shall not be obligated to, provide any and all of such additional services and exercise such powers as are expressly or impliedly granted to special districts by Colorado law, including those powers enumerated in Sections 32-1-1101 and 32-1-1101.7, C.R.S. The exercise of any such powers and authorities shall not be deemed a material modification of this Service Plan.

13. Solar Farm Operation Limitation. In the event that, at any time in the future, applicable State law, or the interpretation thereof, permits, empowers or authorizes the District to plan for, design, acquire, construct, install, relocate, redevelop, provide, finance maintain and/or operate solar energy production facilities, the District will obtain the Town’s consent prior to performing any such activities or services (it being understood that the provision of such activities or services shall not constitute an amendment to this Service Plan if provided by the District after receipt of the Town’s consent). In the event that the Town consents to the design, acquisition, construction, installation, relocation, redevelop, provision, financing maintenance and/or operation of solar energy production facilities, any debt issued through an enterprise for purposes of financing any or all such activities and services shall not be included within, or be counted towards or against, the Total Debt Issuance Limitation.

14. Service Plan Amendment Requirement. This Service Plan has been designed with sufficient flexibility to enable the District to provide required services and facilities under evolving circumstances without the need for numerous amendments. Actions of the District that violate the limitations set forth in this Service Plan or the Intergovernmental

Agreement shall be deemed to be material modifications to this Service Plan and breaches of the Intergovernmental Agreement, and the Town shall be entitled to all remedies available at law or in equity under State and local law.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, to be more specifically defined in an Approved Development Plan. An estimate of the costs of the Public Improvements that may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the zoning on the property in the Service Area and is approximately Seventeen Million Five Hundred Thousand Dollars (\$17,500,000).

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements' standards will be compatible with those of the Town and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

C. Multiple District Structure.

It is anticipated that the Districts, collectively, will undertake the financing and construction of the improvements contemplated herein. Specifically, the Districts intend to enter into an intergovernmental agreement which shall govern the relationships between and among the Districts with respect to the financing, construction and operation of the improvements contemplated herein. The District will establish a mechanism whereby any one or more of the Districts may separately or cooperatively fund, construct, install and operate the improvements.

**VI. FINANCIAL PLAN**

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay from revenues derived from the Maximum Debt Mill Levy and other legally available revenues, which may include revenue assigned by third parties. The total Debt that the Districts shall be permitted to issue shall not exceed the Total Debt Issuance Limitation and shall be permitted to be issued on a schedule and in such year or years as the District determines shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general *ad valorem* taxes to be imposed upon all taxable property within the District. The District will also rely upon various other revenue sources authorized by law. These will include the power to assess fees, rates, tolls, penalties, or charges as provided in

Section 32-1-1001(1), C.R.S., as amended from time to time, and may include revenue assigned by third parties.

B. Maximum Voted Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed eighteen percent (18%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Service Plan, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Debt Mill Levy.

The “Maximum Debt Mill Levy” shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Debt, and shall be determined as follows:

1. For any portion of any aggregate District’s Debt which exceeds fifty percent (50%) of the District’s assessed valuation, the Maximum Debt Mill Levy for such portion of Debt shall be fifty (50) mills less the number of mills necessary to pay unlimited mill levy Debt described in Section VI.C.2 below; adjusted to account for changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement. The mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that, to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2010, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

2. In the event that any portion of the District’s aggregate Debt is equal to or less than fifty percent (50%) of the District’s assessed valuation, either on the date of issuance or at any time thereafter, with the prior written consent of the Town, the mill levy to be imposed to repay such portion of Debt shall not be subject to the Maximum Debt Mill Levy and, as a result, the mill levy may be such amount as is necessary to pay the Debt service on such Debt, without limitation of rate. A mill levy in excess of the Maximum Debt Levy shall not constitute an amendment to this Service Plan if imposed by the District after receipt of the Town’s consent as provided in this Section VI.C.2.

3. For purposes of the foregoing, once Debt has been determined to be within Section VI.C.2 above, so that the District is entitled to pledge to its payment an unlimited *ad valorem* mill levy, the District may provide that such Debt shall remain secured by such unlimited mill levy, notwithstanding any subsequent change in the District’s Debt to assessed ratio. All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S., and all other requirements of State law.

To the extent that the District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S., the term “District” as used

herein shall be deemed to refer to the District and to each subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this definition. All Debt issued by subdistricts will be included within the Total Debt Issuance Limitation.

D. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service and for operations and maintenance. The District may also rely upon various other revenue sources authorized by law. At the District's discretion, these may include the power to assess fees, rates, tolls, penalties, or charges as provided in Section 32-1-1001(1), C.R.S., as amended from time to time, and may include revenue assigned by third parties. In no event shall the debt service mill levy in the District exceed the Maximum Debt Mill Levy.

E. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Service Plan for creation of the District. Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Service Plan shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

F. Security for Debt.

The District shall not pledge any revenue or property of the Town as security for the indebtedness set forth in this Service Plan. Approval of this Service Plan shall not be construed as a guarantee by the Town of payment of any of the District's obligations; nor shall anything in the Service Plan be construed so as to create any responsibility or liability on the part of the Town in the event of default by the District in the payment of any such obligation.

G. TABOR Compliance.

The District will comply with the provisions of TABOR. In the discretion of the Board, the District may set up an enterprise to manage, fund, construct and operate appropriate facilities, services, and programs for non-potable water to be used for irrigation purposes. Any other enterprises or any conduit issuers, such as a 6320 Corporation, that the Board desires to create will require the prior written consent of the Town (it being understood that the creation of any such enterprise or conduit issuer shall not constitute an amendment to the Service Plan if



created by the District after the receipt of the Town's consent). To the extent allowed by law, any entity created by the District will remain under the control of the District's Board.

H. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, is part of the estimated cost of Public Improvements, which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed and maintained. The first year's operating budget for the Districts is anticipated to be approximately Fifty Thousand Dollars (\$50,000) and will be derived from property taxes, developer advances and other revenues.

The Maximum Debt Mill Levy for the repayment of Debt shall not apply to the District's ability to set its mill levy as necessary for the provision of operation and maintenance services to its taxpayers and service users, provided, however, that the mill levy for the provision of operation and maintenance services shall not exceed fifteen (15) mills without the prior written consent of the Town. A mill levy for the provision of operation and maintenance services in excess of fifteen (15) mills shall not constitute an amendment to this Service Plan if imposed by the District after receipt of the Town's consent.

**VII. ANNUAL REPORT**

A. General.

The District shall be responsible for submitting an annual report to the Town's Town Attorney's office no later than August 15<sup>th</sup> of each year.

B. Report Contents.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of December 31<sup>st</sup> of the prior year.
2. Agreements with other governmental entities, either entered into or proposed as of December 31<sup>st</sup> of the prior year.
3. A list of all facilities and improvements constructed or acquired by the District and those that have been dedicated to and accepted by the Town as of December 31<sup>st</sup> of the prior year.
4. Audit of the District's financial statements, for the year ending December 31<sup>st</sup> of the previous year, prepared in accordance with generally accepted accounting principles or audit exemptions, if applicable.

5. Notice of continuing disclosure undertaking for events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument.

6. Any inability of the District to pay its obligations as they come due in accordance with the terms of and Debt instruments, which continue beyond a ninety (90) day period.

## **VIII. DISSOLUTION**

Upon an independent determination of the Board of Trustees that the purposes for which the District was created have been accomplished, the District agrees to file a petition in the appropriate District Court for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all its outstanding indebtedness and other financial obligations as required pursuant to State statutes.

## **IX. DISCLOSURE TO PURCHASERS**

The District will use reasonable efforts to assure that all developers of the property located within the District provide written notice to all purchasers of property in the District regarding the Maximum Debt Mill Levy, as well as a general description of the District's authority to impose and collect rates, fees, tolls, charges and other amounts. The District will cause to be recorded with the Larimer County's Clerk and Recorder's Office a one-page summary of such written notice, which recorded document will provide a website address where specific contact information will be provided where further information can be found.

## **X. INTERGOVERNMENTAL AGREEMENT**

The form of the Intergovernmental Agreement is attached hereto as **Exhibit D**. The District shall approve and execute the Intergovernmental Agreement within ninety (90) days of the date of organization. Failure of the District to execute the Intergovernmental Agreement as required herein shall constitute a material modification and shall require a Service Plan Amendment. The Board of Trustees shall approve the Intergovernmental Agreement in the form attached as **Exhibit D** at the public hearing approving the Service Plan. The Intergovernmental Agreement may be amended by mutual agreement of the Town and District, which amendment shall not require this Service Plan to be amended. In the event of conflict between the Intergovernmental Agreement and this Service Plan, the Intergovernmental Agreement shall govern.

## **XI. CONCLUSION**

It is submitted that this Service Plan for the District, as required by Section 32-1-203(2), C.R.S., establishes that:

1. There is sufficient existing and projected need for organized service in the area to be serviced by the District;

2. The existing service in the area to be served by the District is inadequate for present and projected needs;



3. The District is capable of providing economical and sufficient service to the area within its proposed boundaries;

4. The area to be included in the District does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis;

5. Adequate service is not, and will not be, available to the area through the Town or county or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis;

6. The facility and service standards of the District are compatible with the facility and service standards of the Town within which the special district is to be located and each municipality which is an interested party under Section 32-1-204(1), C.R.S.;

7. The proposal is in substantial compliance with a comprehensive plan adopted pursuant to the Development Code;

8. The proposal is in compliance with any duly adopted Town, regional or state long-range water quality management plan for the area; and

9. The creation of the District is in the best interests of the area proposed to be served.

**EXHIBIT A-1**

**Legal Description of the Initial District Boundaries**

May 7, 2010

A description of PrairieStar Metropolitan District No. 1 located in the S1/2 of Section 2, T4N, R69W of the 6th P.M., in Larimer County, Colorado. For: Sarbaugh Realty Group.

LEGAL DESCRIPTION

PRAIRIESTAR METROPOLITAN DISTRICT NO. 1

A Parcel of land located in the S1/2 of Section 2, T4N, R69W of the 6th P.M., County of Larimer, State of Colorado, being more particularly described as follows:

COMMENCING at the Southwest Corner of said Section 2, from which the W1/4 Corner of said Section 2 bears N00°37'55"W, 2663.62 feet (Basis of Bearing), thence N75°23'26"E, 3299.46 feet to a point on the Westerly Line of proposed Lot 2, Block 4, PrairieStar, a proposed subdivision of the Town of Berthoud, Colorado and the POINT OF BEGINNING;

Thence N00°15'55"E, 20.00 feet along said Westerly Line;

Thence S89°44'05"E, 20.00 feet;

Thence S00°15'55"W, 20.00 feet;

Thence N89°44'05"W, 20.00 feet to the POINT OF BEGINNING;

Area = 400 square feet or 0.009 acre, more or less.

**NOTICE:** According to Colorado law you **must** commence any legal action based upon any defect in this survey within three years after you first discovered such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

\_\_\_\_\_  
Peter D. Steger  
Colorado Professional Land  
Surveyor No. 25379  
1860 Lefthand Cir #A, Longmont, CO 80501

Date: 5/7/10

File: 4657-LGL PS METRO DIST 1.doc

Project: 465-7

## EXHIBIT A-2

### Legal Description of the Inclusion Area Boundaries

May 7, 2010

A description of the Inclusion Area for PrairieStar Metropolitan District Nos. 1, 2, 3, and 4 located in the S1/2 of Section 2, T4N, R69W of the 6th P.M., in Larimer County, Colorado. For: Sarbaugh Realty Group.

#### LEGAL DESCRIPTION

#### PRAIRIESTAR METROPOLITAN DISTRICT NOS. 1, 2, 3, AND 4

All of the S1/2 of Section 2, T4N, R69W of the 6th P.M., County of Larimer, State of Colorado, lying Westerly of the Westerly Right-of-way Line of the Burlington Northern & Santa Fe Railroad, being more particularly described as follows:

BEGINNING at the Southwest Corner of said Section 2, from which the W1/4 Corner of said Section 2 bears N00°37'55"W, 2663.62 feet (Basis of Bearing), thence N00°37'55"W, 2663.62 feet along the West Line of the S1/2 of said Section 2 to the W1/4 Corner of said Section 2;

Thence N89°19'30"E, 3524.03 feet along the North Line of the S1/2 of said Section 2 to the Westerly Right-of-way Line of said Burlington Northern & Santa Fe Railroad;

Thence S03°06'38"E, 2684.23 feet along the Westerly Right-of-way Line of said Burlington Northern & Santa Fe Railroad to the South Line of the S1/2 of said Section 2;

Thence S89°36'41"W, 3640.15 feet along the South Line of the S1/2 of said Section 2 to the Southwest Corner of said Section 2 and the POINT OF BEGINNING.

EXCEPT all of Parcel 232 and all of Parcel 232A conveyed to Department of Transportation, State of Colorado, as described in Rule and Order recorded May 28, 2003, as Reception No. 20030065028 of the records of Larimer County, Colorado, being more particularly described as follows:

BEGINNING at the Southwest Corner of said Section 2, from which the W1/4 Corner of said Section 2 bears N00°37'55"W, 2663.62 feet (Basis of Bearing), thence N00°37'55"W, 1775.83 feet along the West Line of the S1/2 of said Section 2 to the Northerly Line of said Parcel 232A;

The following courses and distances are along the Northerly and Easterly Lines of said Parcel 232A and along the Easterly, Northerly, & Southerly Lines of said Parcel 232:

Thence N89°22'05"E, 57.01 feet;

**EXHIBIT "A"**

Thence S13°58'20"E, 163.02 feet;

Thence S00°14'09"W, 899.23 feet;

Thence S44°44'58"E, 70.73 feet;

Thence S89°44'05"E, 2182.72 feet;

Thence N81°06'42"E, 392.88 feet;

Thence S89°44'05"E, 908.83 feet to the Westerly Right-of-way Line of the Burlington Northern & Santa Fe Railroad;

Thence S03°06'38"E, 420.73 feet along the Westerly Right-of-way Line of said Burlington Northern & Santa Fe Railroad;

Thence N89°44'05"W, 809.48 feet;

Thence N80°34'52"W, 518.60 feet;

Thence N89°44'05"W, 2184.56 feet;

Thence S45°48'28"W, 72.05 feet;

Thence S01°21'00"W, 343.17 feet to the South Line of the S1/2 of said Section 2;

Thence S89°36'41"W, 60.00 feet along the South Line of the S1/2 of said Section 2 to the Southwest Corner of said Section 2 and the POINT OF BEGINNING.

Area = 190.483 acres, more or less.

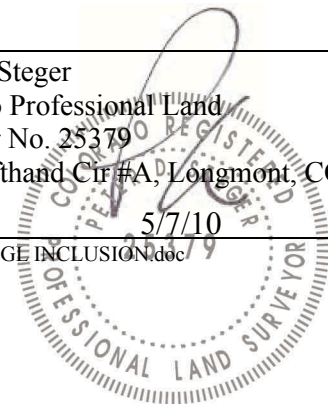
**NOTICE:** According to Colorado law you **must** commence any legal action based upon any defect in this survey within three years after you first discovered such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

\_\_\_\_\_  
Peter D. Steger  
Colorado Professional Land  
Surveyor No. 25379  
1860 Lefthand Cir #A, Longmont, CO 80501

Date: 5/7/10

File: 4657-LGE INCLUSION.doc

Project: 465-7



**EXHIBIT B**  
**Vicinity Map**

**EXHIBIT C-1**

**Initial District Boundary Map**

**EXHIBIT C-2**

**Inclusion Area Boundary Map**

**EXHIBIT D**

**Intergovernmental Agreement**



**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE TOWN OF BERTHOUD, COLORADO  
AND  
PRAIRIESTAR METROPOLITAN DISTRICT No. 1**

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the TOWN OF BERTHOUD, a municipal corporation of the State of Colorado (“Town”), and PRAIRIESTAR METROPOLITAN DISTRICT No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”). The Town and the District are collectively referred to as the “Parties.”

**RECITALS**

WHEREAS, the District was organized to provide those services and to exercise powers as are more specifically set forth in the District’s Service Plan approved by the Town on \_\_\_\_\_ (the “Service Plan”); and

WHEREAS, the Service Plan makes reference to the execution of an intergovernmental agreement between the Town and the District; and

WHEREAS, the District is being formed in conjunction with the PrairieStar Metropolitan District No. 2, the PrairieStar Metropolitan District No. 3, and the PrairieStar Metropolitan District No. 4 (collectively, the “Districts”); and

WHEREAS, the Town and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement.

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**COVENANTS AND AGREEMENTS**

1. Operations and Maintenance. The District shall dedicate the Public Improvements (as defined in the Service Plan) to the Town, other jurisdiction, or an owners association, as appropriate, in a manner consistent with the Approved Development Plan and other rules and regulations of the Town and applicable provisions of the Development Code.

The District is expected to undertake all ownership, operations and maintenance responsibilities for the Public Improvements that are not conveyed to the Town or other governmental entities, or an owners association, as appropriate, and will do so either itself or by contract with the owner associations. The District is authorized to provide for the ongoing operations and maintenance of landscaping improvements, and is authorized to provide covenant enforcement services, in accordance with Section 32-1-1004(8)(a), C.R.S. Revenue to pay the expenses of operations may be obtained from fees legally imposed by the District or other legally available revenues of the District. Whether the facilities are operated directly by District, or are operated by an owners association, user fees may be obtained by the District to offset the

expenses. User fees for use of recreational facilities may be different for residents of the District than for outside users.

2. Acquisition of Land for Public Improvements and Easements. The District agrees to acquire by easement, plat dedication, condemnation (subject to the limitation set forth in Section 3), or cause the dedication to the Town of, all land required by the Town for construction of public improvements being provided by the District that will be conveyed to the Town. Exceptions must be approved by the Town in writing. Failure to comply with this provision shall be deemed to be a material modification of the Service Plan. The District agrees to acquire all land needed by the Town for construction of normal street improvements required by the Town through dedication by the District's developers or by condemnation (subject to the limitation set forth in Section 3). Exceptions must be approved by the Town in writing. Failure to acquire all land needed by the Town for such construction of street improvements shall be deemed to be a material modification of the Service Plan.

3. Eminent Domain Limitation. The District may exercise its powers of eminent domain, as allowed under the Special District Act (Section 32-1-101, et seq., of the Colorado Revised Statutes, as amended from time to time), with regard to any land located within the Inclusion Area Boundaries for the District, but shall not exercise such powers with regard to any land located outside of the Inclusion Area Boundaries without the prior written consent of the Town, which consent may be withheld for any reason within the Town's discretion.

4. Solar Farm Operation Limitation. In the event that, at any time in the future, applicable State law, or the interpretation thereof, permits, empowers or authorizes the District to plan for, design, acquire, construct, install, relocate, redevelop, provide, finance maintain and/or operate solar energy production facilities, the District will obtain the Town's consent prior to performing any such activities or services (it being understood that the provision of such activities or services shall not constitute an amendment to the Service Plan if provided by the District after receipt of the Town's consent). In the event that the Town consents to the design, acquisition, construction, installation, relocation, redevelopment, provision, financing maintenance and/or operation of solar energy production facilities, any debt issued through an enterprise for purposes of financing any or all such activities and services shall not be included within, or be counted towards or against, the Total Debt Issuance Limitation.

5. Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the Town and of other governmental entities having proper jurisdiction and in accordance with the requirements of the Approved Development Plan. The District will obtain the Town's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

6. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

7. Inclusion. The District shall not include within its boundaries any property outside the Service Area without the prior written consent of the Board of Trustees. The District shall not include within any of its boundaries any property inside the Inclusion Area boundaries without the prior written consent of the Town except upon petition of the fee owner or owners of one hundred percent of such property as provided in Section 32-1-401(1)(A), C.R.S.

8. Overlap Limitation. The boundaries of the Districts shall not overlap unless the aggregate mill levy for payment of Debt of the overlapping Districts will not at any time exceed the Maximum Debt Mill Levy of the District. Additionally, the District shall not consent to the organization of any other district organized under the Special District Act within the Service Area that will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Debt Mill Levy of the District, provided, however, if the Town requests an overlap with a Town-initiated district, the aggregate mill levy rate for the payment of Debt shall not include any mill levy of such Town-initiated district.

9. Monies from Other Governments/Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the Town is eligible to apply for, except pursuant to an intergovernmental agreement. This section shall not apply to specific ownership taxes which shall be distributed to and a revenue source for the District without any limitation.

10. Total Debt Issuance. The Districts shall not issue Debt in excess of the Total Debt Issuance Limitation.

11. Consolidation. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the Town, unless such consolidation is with one or more of the Districts.

12. Bankruptcy Limitation. All of the limitations contained in this Agreement, including, but not limited to, those pertaining to the Maximum Debt Mill Levy have been established under the authority of the Town to approve a Service Plan with conditions pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(b) Are, together with all other requirements of Colorado law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt issued with a pledge or that results in a pledge that exceeds the Maximum Debt Mill Levy shall be deemed a material modification of the Service Plan, and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the Town as part of a Service Plan Amendment.

13. Dissolution. Upon an independent determination of the Board of Trustees that the purposes for which the District was created have been accomplished, the District agrees to file a petition in the appropriate District Court for dissolution pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State statutes.

14. Disclosure to Purchasers. The District will use reasonable efforts to assure that all developers of the property located within the District provide written notice to all purchasers of property in the District regarding the Maximum Debt Mill Levy, as well as a general description of the District’s authority to impose and collect rates, fees, tolls, charges and other amounts. The District will cause to be recorded with the Larimer County’s Clerk and Recorder’s Office a one-page summary of such written notice, which recorded document will provide a website address where specific contact information will be provided where further information can be found.

15. TABOR Compliance. The District will comply with the provisions of TABOR. In the discretion of the Board, the District may set up an enterprise to manage, fund, construct and operate appropriate facilities, services, and programs for non-potable water to be used for irrigation purposes. Any other enterprises or any conduit issuers, such as a 6320 Corporation, that the Board desires to create will require the prior written consent of the Town (it being understood that the creation of any such enterprise or conduit issuer shall not constitute an amendment to the Service Plan if created by the District after the receipt of the Town’s consent). To the extent allowed by law, any entity created by the District will remain under the control of the District’s Board.

16. Service Plan Amendment Requirement. Actions of the District that violate the limitations set forth in the Service Plan or this Agreement shall be deemed to be material modifications to the Service Plan and breaches of this Agreement and the Town shall be entitled to all remedies available at law or in equity under State and local law.

17. Multiple District Structure. It is anticipated that the Districts, collectively, will undertake the financing and construction of the improvements contemplated herein. Specifically, the Districts intend to enter into an intergovernmental agreement which shall govern the relationships between and among the Districts with respect to the financing, construction and operation of the improvements contemplated herein. The District will establish

a mechanism whereby any one or more of the Districts may separately or cooperatively fund, construct, install and operate the improvements.

18. Annual Report. The District shall be responsible for submitting an annual report to the Town no later than August 15<sup>th</sup> of each year.

The annual report shall include information as to any of the following:

(i) Boundary changes made or proposed to the District's boundary as of December 31<sup>st</sup> of the prior year;

(ii) Agreements with other governmental entities, either entered into or proposed as of December 31<sup>st</sup> of the prior year;

(iii) A list of all facilities and improvements constructed or acquired by the District and those that have been dedicated to and accepted by the Town as of December 31<sup>st</sup> of the prior year;

(iv) Audit of the District's financial statements for the year ending December 31<sup>st</sup> of the previous year prepared in accordance with generally accepted accounting principles or audit exemptions, if applicable;

(v) Notice of continuing disclosure undertaking for events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument; and

(vi) Any inability of the District to pay its obligations as they come due in accordance with the term of any Debt instruments, which continue beyond a ninety (90) day period.

19. Maximum Debt Mill Levy. The "Maximum Debt Mill Levy" shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Debt, and shall be determined as follows:

(c) For any portion of the District's aggregate Debt which exceeds fifty percent (50%) of the District's assessed valuation, the Maximum Debt Mill Levy for such portion of Debt shall be fifty (50) mills less the number of mills necessary to pay unlimited mill levy Debt described in Section VI.C.2 of the Service Plan; provided that if, on or after January 1, 2010, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes. Such increases or decreases are to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2010, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

(d) In the event that any portion of the District's aggregate Debt is equal to or less than fifty percent (50%) of the District's assessed valuation, either on the date of issuance or

at any time thereafter, with the prior written consent of the Town, the mill levy to be imposed to repay such portion of Debt shall not be subject to the Maximum Debt Mill Levy and, as a result, the mill levy may be such amount as is necessary to pay the Debt service on such Debt, without limitation of rate. A mill levy in excess of the Maximum Debt Levy shall not constitute an amendment to the Service Plan if imposed by the District after receipt of the Town's consent as provided in Section VI.C.2 of the Service Plan.

(e) For purposes of the foregoing, once Debt has been determined to be within Section VI.C.2 of the Service Plan, so that the District is entitled to pledge to its payment an unlimited *ad valorem* mill levy, the District may provide that such Debt shall remain secured by such unlimited mill levy, notwithstanding any subsequent change in the District's Debt to assessed ratio. All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S., and all other requirements of State law.

To the extent that the District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S., the term "District" as used herein shall be deemed to refer to the District and to each such subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this definition. All Debt issued by subdistricts will be included within the Total Debt Issuance Limitation.

20. Debt Instrument Disclosure Requirement. In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Service Plan for creation of the District. Similar language describing the limitations in respect to the payment of the principal of and interest on Debt set forth in this Service Plan shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

21. Security for Debt. The District shall not pledge any revenue or property of the Town as security for the indebtedness set forth in the Service Plan. Approval of the Service Plan and this Agreement shall not be construed as a guarantee by the Town of payment of any of the District's obligations, nor shall anything in the Service Plan or this Agreement be construed so as to create any responsibility or liability on the part of the Town in the event of default by the District in the payment of any such obligation.

22. Operations and Maintenance Mill Levy. The Maximum Debt Mill Levy for the repayment of Debt shall not apply to the District's ability to set its mill levy as necessary for the provision of operation and maintenance services to its taxpayers and service users, provided, however, that the mill levy for the provision of operation and maintenance services shall not



exceed fifteen (15) mills without the prior written consent of the Town. A mill levy for the provision of operation and maintenance services in excess of fifteen (15) mills shall not constitute an amendment to the Service Plan if imposed by the District after receipt of the Town's consent.

23. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: PrairieStar Metropolitan District No. 1  
c/o MaryAnn McGeady, Esq.  
450 E. 17th Ave., Suite 400  
Denver, CO 80203

To the Town: Town of Berthoud  
Attention: Town Attorney  
Town Hall, 328 Massachusetts Ave.  
P.O. Box 1229  
Berthoud, Colorado 80513

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

24. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Service Plan.

25. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

26. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

27. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado.

28. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

29. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

30. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the Town any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the Town shall be for the sole and exclusive benefit of the District and the Town.

31. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

32. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

33. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

34. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Service Plan.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**



**[SIGNATURE PAGE FOR INTERGOVERNMENTAL AGREEMENT]**

PRAIRIESTAR METROPOLITAN DISTRICT  
NO. 1

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

TOWN OF BERTHOUD, COLORADO

By: \_\_\_\_\_  
Mayor

Attest:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM: \_\_\_\_\_