

FACILITIES PAYMENT AGREEMENT

This **FACILITIES PAYMENT AGREEMENT** (“**Agreement**”) is made and entered into this ____ day of _____ 2025, being the date executed by the mayor below and being the effective date hereof, by and between **PEAK METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”) and the **CITY OF COLORADO SPRINGS**, a Colorado municipal corporation and home rule city by and through its enterprise, the **COLORADO SPRINGS MUNICIPAL AIRPORT** (the “**City**”). The District and City may be referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties**”.

RECITALS

A. The City owns certain real property located in the City of Colorado Springs, Colorado and is developing thereon a phased mixed-use commercial development commonly known as Peak Innovation Park (the “**Project**”).

B. The Project is within the boundaries and/or service area of the District.

C. The District operates in accordance with the authority, and subject to the limitations, of a Consolidated Service Plan for Peak Metropolitan District Nos. 1-3 approved by the City Council of the City on August 28, 2018, as amended on February 12, 2019, and further amended on March 22, 2022 (as the same may be amended or restated from time to time, the “**Service Plan**”).

D. The Service Plan authorizes the District to construct, acquire and install public improvements, including water, sanitation, safety protection, park and recreation, public transportation, and mosquito control improvements and other facilities and services (collectively, the “**Public Improvements**”), which benefit property within the District’s boundaries and/or service area, which include portions of the Project.

E. The City is undertaking construction and contracting for the construction of certain drainage facilities (“**16 Acre Improvements**”) benefitting the Project and necessary for the development of the Project, to be located on the 16 acres, more or less, of property identified by El Paso County Tax Schedule Number 5507200003 (the “**Property**”);

F. Because the 16 Acre Improvements will benefit the Project served by the District, the City has requested the District to make payments to the City for the 16 Acre Improvements and related costs, including but not limited to, all costs of design, testing, engineering, acquisition, construction, related consultant fees, and construction management (“**Construction Costs**”), based upon and in compliance with the terms of this Agreement.

G. On March 23, 2021, District 1 issued its \$38,495,000 Limited Tax General Obligation Bonds, Series 2021A Bonds and \$4,955,000 Subordinate Limited Tax General Obligation Bonds, Series 2021B Bonds, and may issue additional bonds (the “**Bonds**”), the proceeds of which may be utilized in part to pay the City for the Construction Costs in accordance herewith

H. The District and the City desire to set forth the rights, obligations, and procedures for the District to pay the City for Construction Costs related to the 16 Acre Improvements, as provided herein.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

COVENANTS AND AGREEMENTS

1. Construction of 16 Acre Improvements.

(a) The City agrees to construct and complete the 16 Acre Improvements in full conformance with the signed construction plans identified on **Exhibit A** (“**Plans and Specifications**”). In furtherance of the purposes of the District as expressed in the Service Plan, this Agreement shall provide a means by which the District may make payment to the City for Certified Construction Costs, as defined herein. If the District so requests, the City shall provide periodic reports on the status of completion and costs of the 16 Acre Improvements.

(b) The City must obtain the District’s prior approval of any material deviation from or modification to the Plans and Specifications, including but not limited to as a result of any warranty work (“**Material Scope Change**”). In the event of any proposed Material Scope Change, the City shall provide written notice to the District. The District shall have ten (10) working days to object in writing to the proposed Material Scope Change. Upon receipt of a written objection, if the Parties are unable to agree on a resolution of the Material Scope Change to the satisfaction of both Parties within ten (10) working days after receipt of such written objection, then the Expedited Dispute resolution process set forth in Section 1.(c) below may be invoked by either District. Failure of the District to object to a proposed Material Scope Change as required and in the time periods set forth in this paragraph shall be deemed an approval of such changes.

(c) Notwithstanding anything to the contrary herein, disputes related to Material Scope Changes (“**Expedited Disputes**”) shall all be resolved by having each party appoint an engineer with technical knowledge regarding the disputed matter and the appointed engineers will agree upon a third engineer to make the final determination, which shall be binding on the Parties.

2. Construction Contract Requirements. Any construction contract for all or any portion of the 16 Acre Improvements shall require the contractor and/or the City to provide a warranty for the period of time between initial acceptance and final acceptance of the 16 Acre Improvements by the appropriate accepting jurisdiction, together with payment and performance bonds, in a form required by the City.

3. Certification of Construction Costs. The Parties hereby agree that a condition precedent to the District’s obligation to provide payment to the City for Construction Costs associated with the 16 Acre Improvements shall be the District’s receipt of a written certification (“**Engineer’s Certification**”) of an independent engineer engaged by the District (“**Independent Engineer**”) that the improvements that are the subject of the City Application for Certification (defined below) are Public Improvements authorized under the Service Plan and Colorado law, and that the Construction Costs for the 16 Acre Improvements are reasonable and comparable to

the costs of similar Public Improvements constructed in and around the area of Colorado Springs. Such Independent Engineer's determination shall be conclusive regarding the amount of Construction Costs the District shall be obligated to pay the City under this Agreement ("**Certified Construction Costs**"), notwithstanding the fact that the actual Construction Costs incurred by the City may exceed the Certified Construction Costs. For these purposes, the City shall cooperate and use commercially reasonable efforts to provide the following information and documentation to the District and the Independent Engineer in order that the Engineer's Certification may be prepared ("**City Application for Certification**"):

(a) Copies of all contracts, pay requests, change orders, invoices, and any other requested documentation to verify the amount of Construction Costs requested;

(b) Confirmation and any reasonable evidence requested by the District from the City to ensure no duplication in payment of Construction Costs; and

(c) Such other documentation, records and verifications as may reasonably be required by the District for the purposes of certifying Construction Costs.

A form of the City Application for Certification is attached hereto as **Exhibit B**. Further, the City will permit the District and its designees access to the construction site of the 16 Acre Improvements at reasonable times for periodic inspection after appropriate notice as may be necessary in association with the Independent Engineer's review of any City Application for Certification.

4. Project Budget. The Parties agree that the budget and cost estimate attached hereto as **Exhibit C**, includes a reasonable estimate of all design, engineering, geotechnical engineering, construction, management, and a contingency amount associated with construction and installation of the 16 Acre Improvements (the "**Draft Project Budget**"). The Parties agree that the City will provide the District with a final budget (the "**Final Project Budget**") and with any modifications or changes to the Final Project Budget as they may occur.

5. Payment of Certified Construction Costs.

(a) The City shall provide a City Application for Certification no more frequently than monthly, in accordance with the schedule set forth on Exhibit B. Each City Application for Certification shall be reviewed by the District and the District's Independent Engineer within thirty (30) days after the City's submittal. The District shall make payment to the City of any approved Certified Construction Costs within fifteen (15) days after the District's approval ("**District Payment Date**") to reimburse, or provide for payment of, Certified Construction Costs. The District is not responsible for payment of costs that are not deemed Certified Construction Costs by the District's Independent Engineer. Subject to all other applicable provisions hereof, the District agrees to pay the City for Certified Construction Costs up to a maximum amount of One Million Seven Hundred Fifty-Four Thousand Five Hundred Thirty-Eight Dollars (\$ 1,754,538.00) ("**Maximum Payment Amount**"), unless otherwise agreed to in writing by the Parties. Simple interest shall accrue, after the District Payment Date, on amounts reimbursable to the City under this Agreement, until paid, at the rate of eight percent (8%) per

annum. The City and the District acknowledge the existence of limitations on the District's ability to make such payments as a result of the Service Plan.

(b) The District agrees, as of the date hereof it has sufficient proceeds as a result of issuance of the Bonds to pay the City for the 16 Acre Improvements up to the Maximum Payment Amount and has appropriated funds up to the Maximum Payment Amount. It is hereby agreed and acknowledged that this Agreement evidences an intent to pay the City hereunder, but that this Agreement shall not constitute a debt or indebtedness of the District within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation for the purposes of Article X, Section 20 of the Colorado Constitution, and the making of any payment hereunder shall be at all times subject to annual appropriation by the District. By acceptance of this Agreement, the City agrees and consents to all of the limitations with respect to payment due hereunder and in the District's Service Plan.

(c) The City agrees to provide the District with conditional or, to the extent paid, unconditional lien waivers and indemnifications from each contractor verifying that all amounts due to contractors, subcontractors, material providers or suppliers have been paid in full, in a form acceptable to the District. Upon final payment, unconditional lien waivers, if not already furnished to the District with a City Application for Certification, will be provided to the District and to the District's Independent Engineer.

6. Release. The City shall use all commercially reasonable efforts to complete construction of the 16 Acre Improvements so the release by Cygnet Land, LLC ("**Cygnet**") in that certain General Release and Settlement Agreement among the Districts, the City, Cygnet, UFCS Airport, LLC, and Urban Frontier, LLC dated _____, 2025 ("**Release Agreement**") arises and the District, Peak Metropolitan District No. 2 and Peak Metropolitan District No. 3 (collectively, the "**Districts**") receive the release from Cygnet thereunder. Upon payment of the "**Final Payment Amount**," which shall be the earlier of (a) the date on which the full Maximum Payment Amount has been paid by the District to the City, or (b) the date the City receives final acceptance and/or notice of final completion of the 16 Acre Improvements from the City, or (c) the City fails to perform or stops the construction of the 16 Acre Improvements, to the extent permitted by law and in the event the Districts are subject to any further claims or demands related to damage or injury to the property identified at El Paso County Tax Schedule No. 5507200003, the City will defend, indemnify, and hold the Districts harmless from such claims or demands, up to a maximum amount of One Million Seven Hundred Fifty-Four Thousand Five Hundred Thirty-Eight Dollars (\$ 1,754,538.00).

7. Term; Repose. In the event the District has not paid the City and/or paid any portion of the Certified Construction Costs by December 31, 2055, whether invoiced or not invoiced by such date, any amount of principal and accrued interest outstanding on such date shall be deemed to be forever discharged and satisfied in full, unless the City has requested an extension of such term of repose prior thereto.

8. 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 addressee or by courier delivery via FedEx or other nationally recognized overnight air courier service, by electronically-confirmed

email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Peak Metropolitan District No. 1
450 East 17th Avenue, Suite 400
Denver, CO 80203
Phone: 303-592-4380
Attention: Megan Becher
Email: legalnotices@specialdistrictlaw.com

To City: City of Colorado Springs
30 South Nevada Avenue, Suite 604
Colorado Springs, CO 80901
Attention: Troy Stover
Email: troy.stover@coloradosprings.gov

With a Copy To: Office of the City Attorney
30 South Nevada Avenue, Suite 501
Colorado Springs, CO 80901
Attention: David Andrews
Email: david.andrews@coloradosprings.gov

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with FedEx or other nationally recognized overnight air courier service, on the date of transmission if sent by electronically-confirmed email transmission, 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.

9. Assignment. No Party shall assign any of its rights or delegate any of its duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

10. 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 Parties 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 Parties shall be for the sole and exclusive benefit of the Parties.

11. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

12. Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the State District Court in and for the County of El Paso, Colorado.

13. 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 permitted successors and assigns.

14. 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.

15. 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.

16. 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.

17. Incorporation of Exhibits. All exhibits described in and attached to this Agreement are herein incorporated by reference.

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

19. Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto; provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the District or the City unless the same is in writing and duly executed by the Parties hereto.

20. No Waiver of Immunity. The Parties specifically do not waive or intend to waive any protection, immunity, or other provision of the Colorado Governmental Immunity Act, C.R.S. § 24-1-101 *et seq.*, as now written or hereafter amended.

SIGNATURE PAGES FOLLOW

**[SIGNATURE PAGE 1 OF 2 TO
FACILITIES PAYMENT AGREEMENT]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.


DISTRICT:

PEAK METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado

By: 

Garrett Baum, President

ATTEST:



Secretary or Assistant Secretary

**[SIGNATURE PAGE 2 OF 2 TO
FACILITIES PAYMENT AGREEMENT]**

CITY:

CITY OF COLORADO SPRINGS, a Colorado
municipal corporation and home rule city by and through
its enterprise, the COLORADO SPRINGS MUNICIPAL
AIRPORT

By: _____
Blessing A. Mobolade, Mayor

Approved by Resolution _____

ATTEST:

APPROVED AS TO FORM:

David Andrews, Office of the City Attorney



MAY 2025

[illegible]

VICINITY MAP



CONC. ENGINEER / ECU ADMINISTRATOR

ACD 7th Ed CD0233

DESIGN - CREATORS & ALEXIMIA

[illegible]

SHEVCHUK M. I., D. I. ZEMINA

iv.

ENGINEER/DEVELOPER'S STATEMENT:

1. THE POWER/INTEREST/HAVE READ AND WILL COMPLY WITH ALL OF THE REQUIREMENTS SPECIFIED IN THESE RELEASE PLANS AND SIGNIFICATIONS

[Signature]

DATE 06/02/25

OFFICE OF COLORADO SKININOS
30 S. MEYOLA AVE.
COLORADO SPRINGS, CO 80903

El PASO SO. 16.75

[illegible]

01/17/2025

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JOSEPH PALMER, T.C.
COUNTY ENGINEER / ECU ADMINISTRATOR

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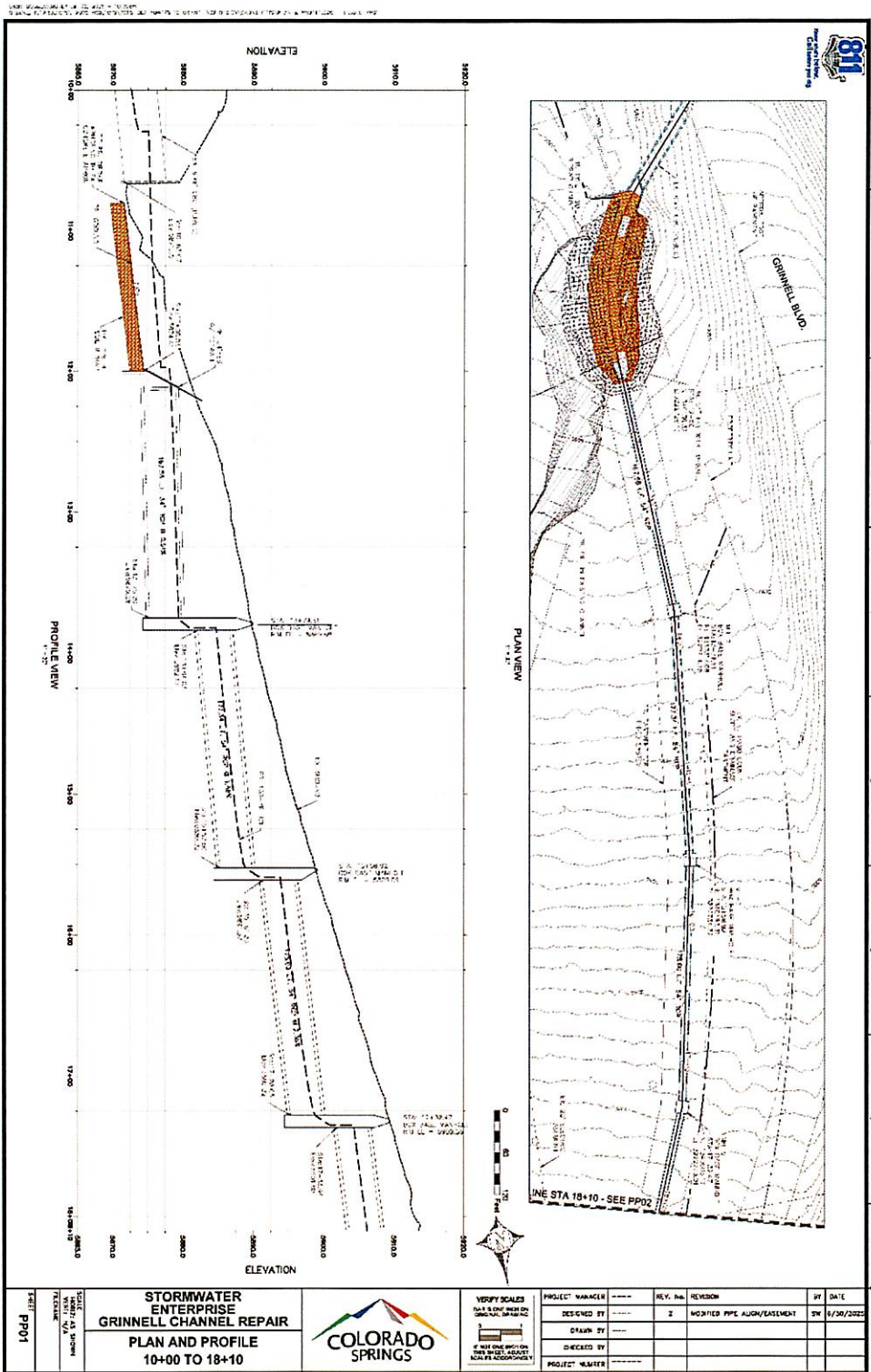
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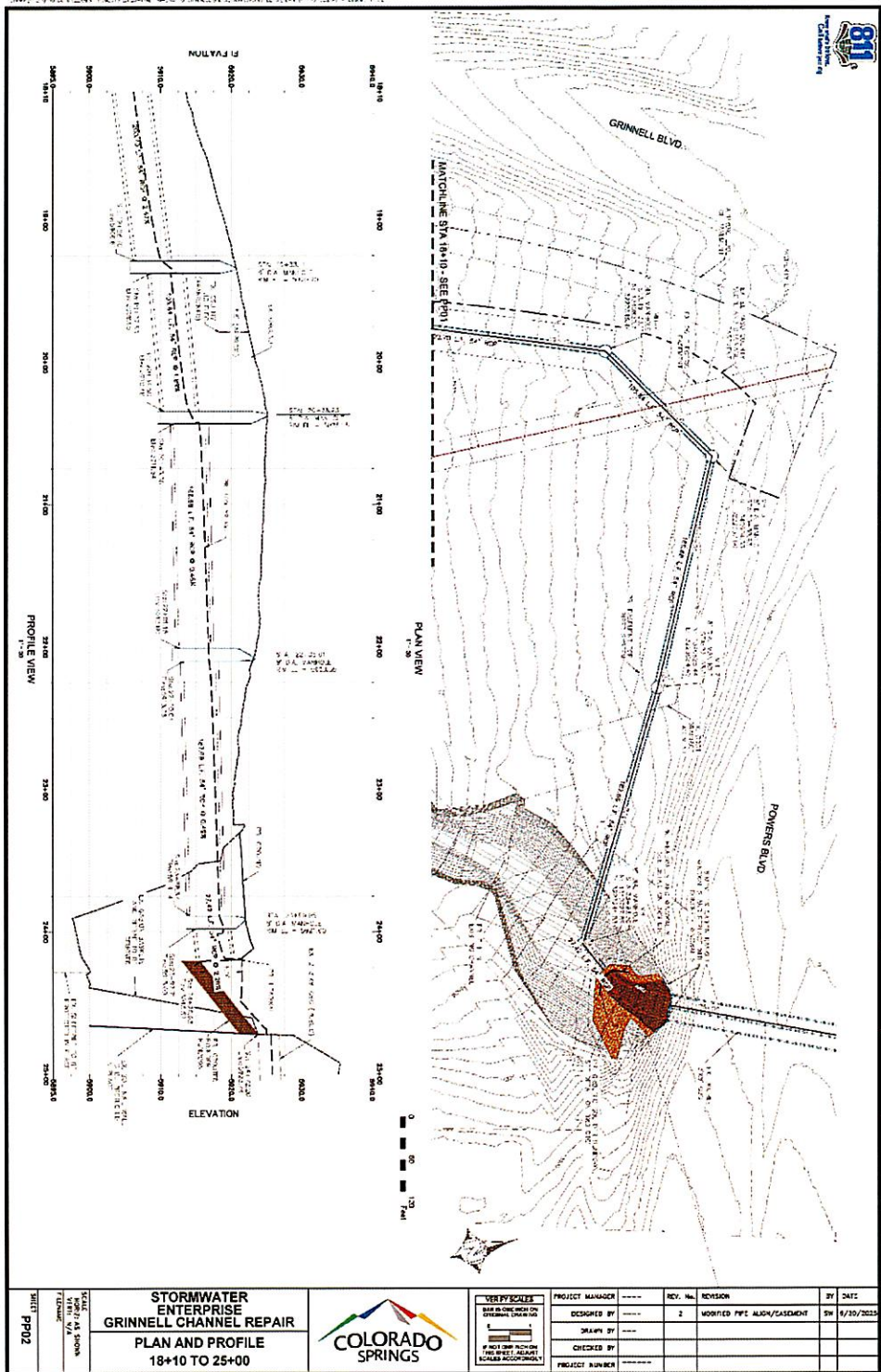
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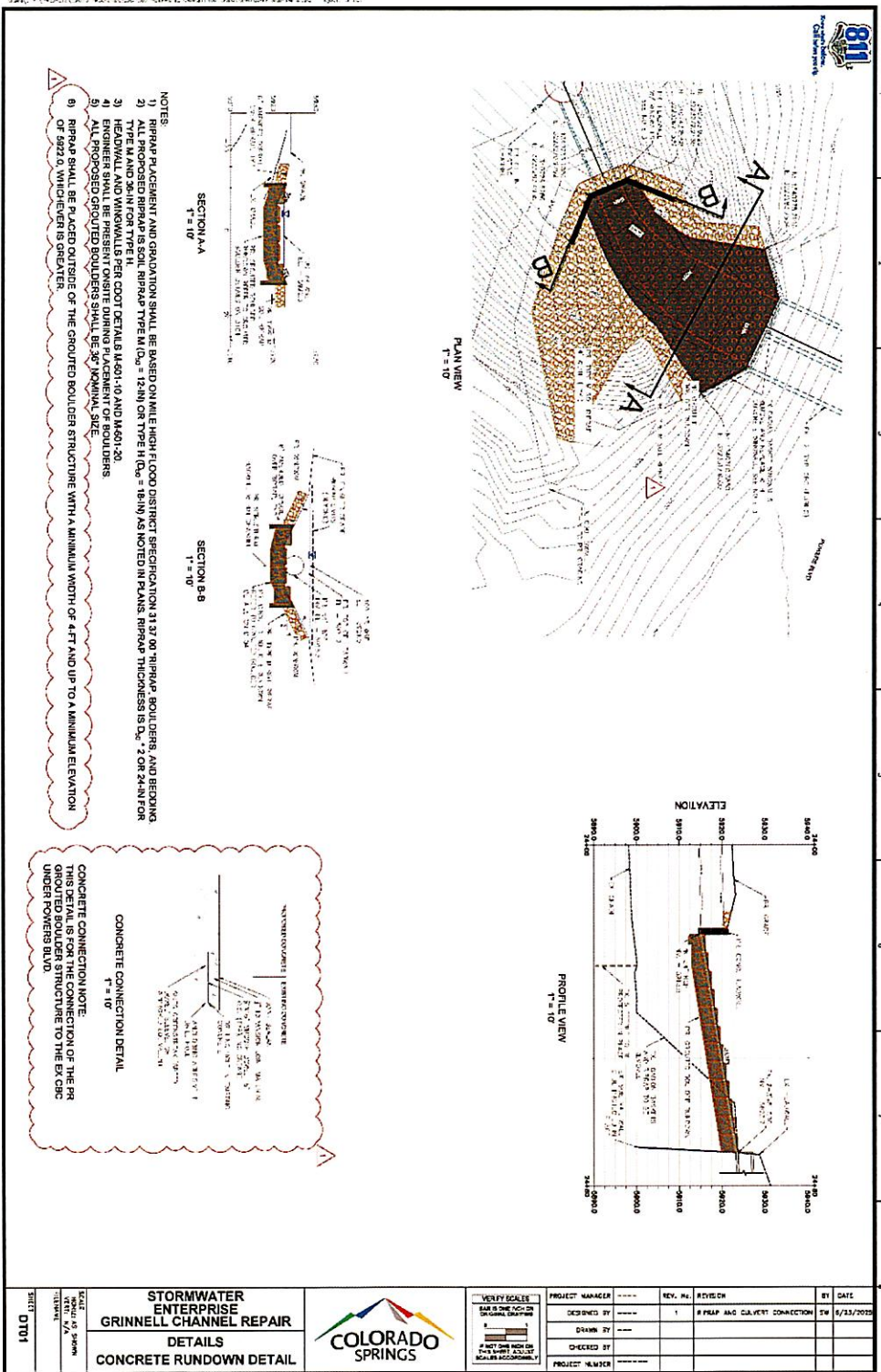
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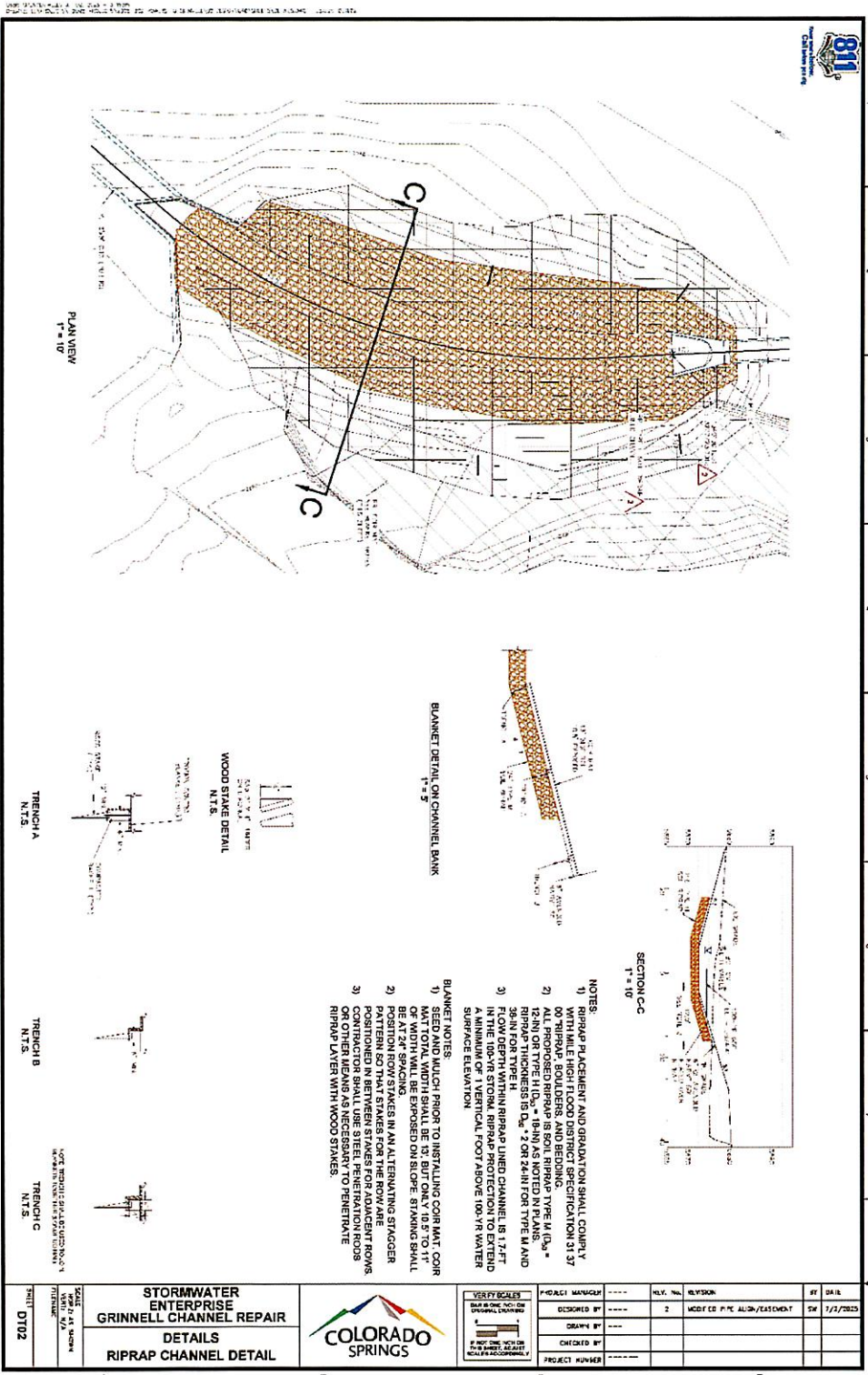
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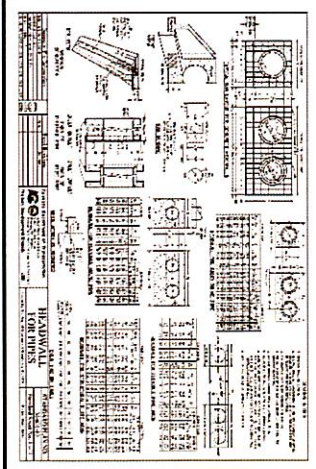
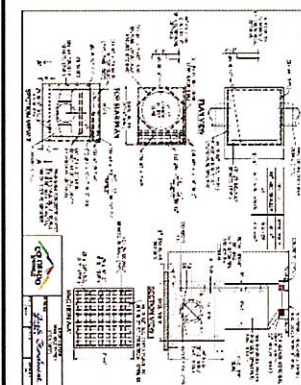
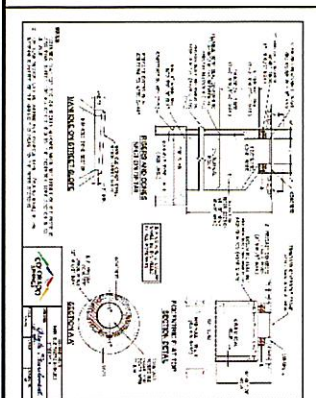
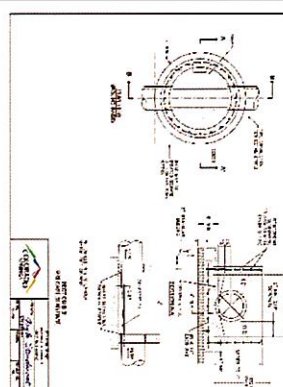
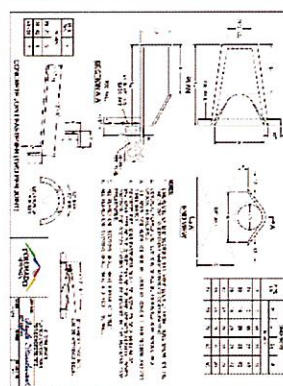
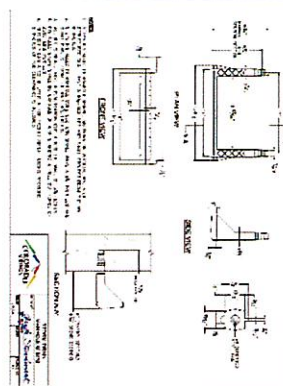
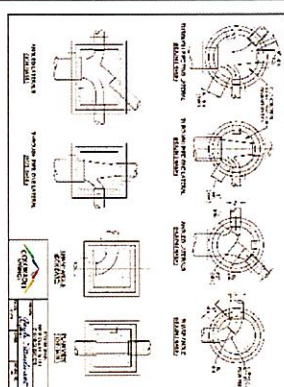
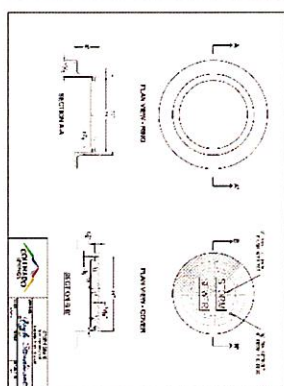
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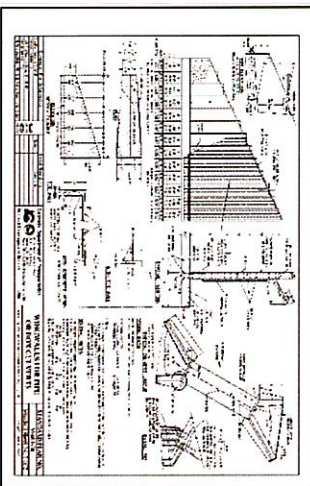




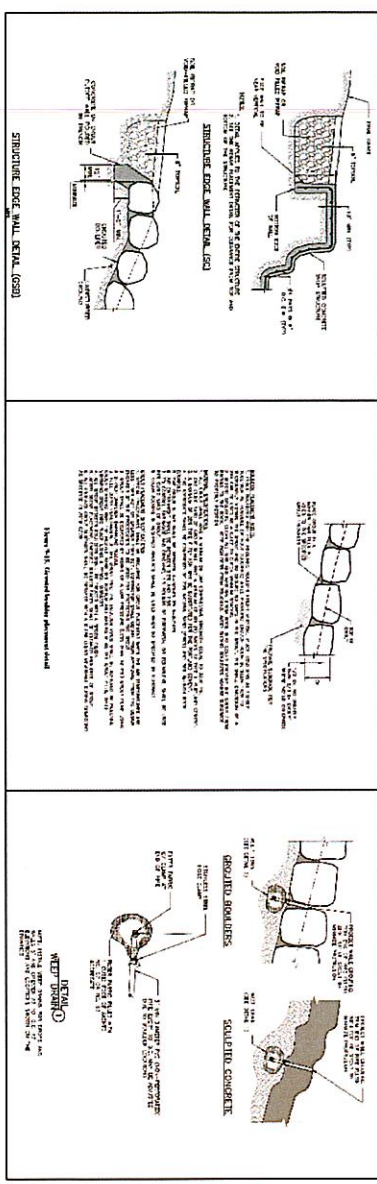




[illegible][illegible]



NO.	DESCRIPTION	DATE	BY	CHECKED BY	APPROVED BY
1	REPAIR OF STORMWATER CHANNEL	11/11/2011	J. L. BROWN		
2	REPAIR OF STORMWATER CHANNEL	11/11/2011	J. L. BROWN		
3	REPAIR OF STORMWATER CHANNEL	11/11/2011	J. L. BROWN		
4	REPAIR OF STORMWATER CHANNEL	11/11/2011	J. L. BROWN		
5	REPAIR OF STORMWATER CHANNEL	11/11/2011	J. L. BROWN		
6	REPAIR OF STORMWATER CHANNEL	11/11/2011	J. L. BROWN		
7	REPAIR OF STORMWATER CHANNEL	11/11/2011	J. L. BROWN		
8	REPAIR OF STORMWATER CHANNEL	11/11/2011	J. L. BROWN		
9	REPAIR OF STORMWATER CHANNEL	11/11/2011	J. L. BROWN		
10	REPAIR OF STORMWATER CHANNEL	11/11/2011	J. L. BROWN		



STORMWATER ENTERPRISE GRINNELL CHANNEL REPAIR DETAILS STANDARD DETAILS		PROJECT MANAGER DESIGNED BY DRAWN BY CHECKED BY PROJECT NUMBER	REV. NO. REVISION	BY DATE

EXHIBIT B

APPLICATION FOR CERTIFICATION

Please complete and submit this Application for Certification (“**Application**”) to the District’s Independent Engineer, Schedio Group LLC, pursuant to the Facilities Payment Agreement (16 Acre) between Peak Metropolitan District No. 1 (the “**District**”) and the City of Colorado Spring (the “**City**”), dated _____, 2025, (the “**Agreement**”):

- The City shall provide a completed Application no more frequently than monthly.
- Each Application shall be reviewed by the District and Schedio Group within thirty (30) days of submittal so that an Engineer’s Certification regarding Certified Construction Costs may be considered.
- The District shall make payment to the City of any approved Certified Construction Costs within fifteen (15) days of approval by the District so that the City may pay directly pay for the Certified Construction Costs.
- The District is not responsible for payment of costs that are not deemed Certified Construction Costs by the District’s Independent Engineer.

All terms not defined herein shall have the same meaning as set forth in the Agreement.

1. **Date of Submission:** _____

2. **City Applicant’s Contact Information:**

Name: _____

Phone: _____

Email: _____

3. **Types of Documents to Submit to Schedio Group LLC:**

Indicate which documents you will be submitting with this Application

- ☐ Approved Construction Drawings
- ☐ Construction Drawing Revisions
- ☐ Task Orders/Work Orders
- ☐ Change Orders
- ☐ Invoices/Pay Applications
- ☐ Conditional Lien Waivers (*please ensure SOVs are very detailed*)
- ☐ Unconditional Lien Waivers (*if contractors have been paid*)

4. 2025 Schedule for Submission of Documents:*

Processing Month	Draw Request
July	Tuesday, July 8, 2025
August	Tuesday, August 12, 2025
September	Tuesday, September 9, 2025
October	Tuesday, October 7, 2025
November	Tuesday, November 11, 2025
December	Tuesday, December 9, 2025

** 2026 Schedule for Submission of Documents will be available at a later time.*

5. Submission of Documents to Schedio Group LLC:

Please submit documents (*including a completed Application*) via this link →
<https://schediogroup.egnyte.com/ul/YUry2mnjlw>

6. Review by Schedio Group LLC:

- a. Schedio Group LLC will review and, if the documentation is insufficient, they will reach out to you for additional information by using the contact information you provided on the Application.
- b. If documentation is sufficient, Schedio Group LLC will issue an Engineer's Certification.

7. Review/Approval by the District:

Once the District receives the Engineer's Certification, the District's accountant will prepare a requisition for the District's Board of Directors (the "**Board**") to approve at a District Board meeting.

8. Payment to the City:

After the Board acknowledges the Engineer's Certification and approves the corresponding requisition, the District can make the payment to the City.

9. Unconditional Lien Waivers:

Final Unconditional Lien Waivers should be submitted to Schedio Group LLC once contractors have been paid, if such waivers have not already been submitted with an Application for Certification.

EXHIBIT C

Draft Project Budget

Construction	
HEI	\$ 1,632,262.00
Engineering Costs	
Vivid Engineering - Geotechnical	\$ 29,445.00
SWENT Design Cost	\$ 42,339.00
SWENT Construction Management Cost	\$ 50,492.00
Estimated Total	\$ 1,754,538.00