

**ANNEXATION AGREEMENT  
Prairie Crossing North Annexation  
Prairie Properties, LLC  
(File # A-08-05)**

THIS AGREEMENT is made effective this 1<sup>st</sup> day of <sup>December</sup> ~~November~~, 2009, by and between the *City of Post Falls*, 408 North Spokane Street, Post Falls, Idaho, a municipal corporation organized pursuant to the laws of the State of Idaho, hereinafter termed the "City," and *Prairie Properties, LLC* hereinafter termed the "Owner."

WHEREAS, the Owner owns a tract of land adjacent to the City limits of the City of Post Falls, which the Owner wishes to develop in accordance with zoning designations applied by the City of Post Falls. Said property for which annexation is requested is more particularly described as:

That portion of the Southwest Quarter of Section 19, Township 51 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, described as follows:

BEGINNING at the West 1/4 Corner of said Section 19, from which the Southwest Corner of said Section bears S01°01'59"W, a distance of 2,640.05 feet;

thence S88°55'52"E along the north line of said Southwest Quarter, a distance of 1,356.21 feet;

thence S00°59'01"W, a distance of 1,189.76 feet, more or less, to the centerline of the Spokane International Railroad;

thence N63°38'33"W along said centerline, a distance of 1,501.52 feet, more or less, to a point on the west line of said Southwest Quarter;

thence N01°01'59"E along said west line, a distance of 548.34 feet, more or less, to the POINT OF BEGINNING,

**EXCEPT** any portion lying within the rights-of-way of State Highway 41 or the Spokane International Railroad.

Containing 25 acres, more or less.

WHEREAS, the Mayor and City Council of the City of Post Falls have determined it to be in the best interests of the City to annex the lands described above (hereinafter, "Described Lands"), subject to the Owner performing the covenants and conditions hereafter set forth;

NOW THEREFORE, IN CONSIDERATION of the covenants and conditions set forth herein, the parties agree as follows:

1. **Purpose:**

Owner enters into this Agreement to obtain annexation of the Described Lands, while City seeks to obtain partial mitigation of the effects of annexation of the Described Lands. Owner acknowledges that city has no duty to annex the Described Lands and that the promises of Owner constitute an inducement for City to do so. The term "Owner" is deemed to include any successor in interest in the Described Lands.

2. **Water/Water Rights/Sewer/Traffic Infrastructure:**

A. Water. Owner agrees to use a reasonably available municipal water supply system to serve future development of the lands subject to this Agreement and to be responsible for all required fees and charges including all connection and/or capitalization charges generally applicable at the time service is requested. At present the lands subject to this Agreement are or will by subsequent annexation be located within the Ross Point Water District boundaries. Water service shall be provided in accordance with rules and regulations of the Ross Point Water District. Terms of service to be provided by the Ross Point Water District are subject to the policies of that independent public entity. Adequate fire flows shall be maintained as the Described Land develops to comply with International Fire Code provisions.

B. Water Rights. Prior to commencement of development of the Described Lands, Owner shall grant to the City, Ross Point Water District or to a municipal water purveyor designated by the City, all water rights associated with the land being annexed, but may continue the use of the water for agricultural purposes from the well located on site, if any, until such time that the annexed area is fully developed, at which time Owner shall discontinue the use of the well and the use of the water for agricultural purposes.

C. Sanitary Sewer. City does not warrant that sanitary sewer capacity will be available at the time Owner requests connection to the City's sanitary sewer system. City recognizes however that certain surcharge funds will be collected from Owner's development in contemplation of connecting to and continued use of the sanitary sewer system. Therefore, if available sewer treatment plant capacity cannot be reasonably assured within 180 (one hundred eighty) days of the date that service is to be provided pursuant to a request by Owner, Owner is authorized to provide temporary sewer service by resorting to any lawful public or private alternative so long as legal requirements can be met and subject to approval by the City, which approval will not be unreasonably withheld. Upon the availability of treatment capacity, the owner shall disconnect from the temporary

service and connect to and divert flows to the public system. Any proposed alternative must not frustrate the progression and continuity of the City's wastewater collection system. Owner recognizes that City operates its sanitary sewer system as an enterprise undertaking subject to the economic realities of such endeavors.

As a requirement of this Annexation a Wastewater Study was prepared by J-U-B ENGINEERS, dated May 2008. The Study concluded the subject property can be permanently served with a future regional lift station located near the intersection of Charleville and Prairie Avenue and a future gravity sewer trunk line located in Meyer Road to the east. The Meyer Road sewer line will convey wastewater from Prairie Avenue to a future 12<sup>th</sup> Avenue Lift Station which will ultimately convey wastewater to the treatment plant through a future dedicated sewer force main in 12<sup>th</sup> Avenue, ("12<sup>th</sup> Avenue Facility").

The Wastewater Study further confirmed that wastewater from all or part of the subject area can be routed temporarily to an existing line in Highway 41, approximately ½ mile south of Prairie Avenue, until such time as the Meyer Road line is required to be constructed. The City acknowledges that the Owners may connect to the Highway 41 sewer on an interim basis, subject to the terms outlined in this Agreement.

Owner understands and agrees that:

Charleville/Prairie Facility

- A lift station at Charleville and Prairie Avenue pumping to a connection at Highway 41 and Prairie Avenue, and subsequently to the intersection of Prairie and Meyer Road is required to provide service to the development and will need to be constructed by Owner and other owners within the annexation area at their cost. The proportionate share of Owner shall be determined by a separate agreement between Owner and other owners.

12<sup>th</sup> Avenue Facility

- The flows in the Caton Line that will trigger the requirement to commence design and construction of the 12<sup>th</sup> Avenue Facility shall be 1.74 CFS. With existing flows at 0.33 CFS, the parties estimate there is a current unused capacity of 1.41 CFS, or 2,750 Service Units ("Reserve SUs") – One SU is defined as 5,000 gallons of sewage flow per month.
- The 12<sup>th</sup> Avenue Facility is a capital improvements plan project and sewer capacity replacement fees, ("Sewer Cap Fees") may therefore be available to fund a portion of these improvements. The City and Owner recognize however that given other improvements contemplated in the capital improvements plan with higher priority, sufficient funds may not be

available from revenues generated solely by Sewer Cap Fees at a time the need for the 12<sup>th</sup> Avenue Facility is triggered.

- The cost for construction of the 12<sup>th</sup> Avenue Facility is currently estimated at \$8,283,450.00. This cost would be shared pro-rata by the total number of Reserve SUs. Until such time as revenue sufficient to construct said facility is collected the resulting cost per Reserve SU will be added by the City as a surcharge to all collected Sewer Cap Fees within the 12<sup>th</sup> Avenue Lift Station service area. This surcharge is currently proposed at \$3,012.00 per SU ( $\$8,283,450 \div 2,750 \text{ SUs} = \$3,012$ ). Such surcharge fees shall be held in a segregated account dedicated to the costs of the 12<sup>th</sup> Avenue Facility, or reimbursement as provided herein.
- The City will not reallocate any surcharge funds to improvements other than the 12<sup>th</sup> Avenue Facility.

#### Meyer Road Line

- The owners acknowledge that sanitary sewer flows from the lands to be annexed consistent with the provisions of this Agreement are master planned to be routed from a lift station and force main located on or adjacent to annexed lands through a future gravity sanitary sewer line, to be installed within Meyer Road and connecting to the 12<sup>th</sup> Avenue Lift Station. The owners have requested they be allowed to temporarily divert wastewater flows into the Highway 41 Sanitary Sewer Line that was financed by property owners in the Highway 41 corridor until the Meyer Line is constructed; at which time, they would need to re-direct flows to that line. Trigger flows within the Highway 41 Line requiring design and completion of construction, respectively, of the Meyer Line are 0.9 and 1.2 cubic feet per second (CFS), measured between 12<sup>th</sup> and Mullan Avenues. The owner acknowledges its obligation to construct sanitary infrastructure within and throughout its contemplated development to conform with the City's Wastewater Master Plans, and its responsibility to participate with the City and others in funding the construction of the Meyer Road Line from the eastern end of its development to the nearest point of connection.

The City may pursue local improvement districts, grants, or other funding sources to assist with funding the Meyer Line; and the owners or their successors agree to fully participate, cooperate, and support efforts to assemble these funding mechanisms.

The owner acknowledges that the City cannot guarantee that sufficient capacity will be available in the future within the Highway 41 Sanitary Sewer Line, to accommodate build-out of its contemplated development. City will continue to monitor waste water flows and projected

development within the Highway 41 Flow Basin. The owner acknowledges that participants in the Highway 41 Local Improvement District have first rights to capacity within the line, and that the City may suspend building permits on the lands to be annexed should the 1.2 CFS of existing and other approved flows trigger point be met before the Meyer line is constructed. The Owner shall post surety or provide another acceptable means of funding the Meyer Line, once the Highway 41 Line reaches trigger flows of 0.9 CFS in order to release further building permits. Nothing in this agreement shall obligate the City to construct the planned Meyer line.

- The cost estimate for the Meyer Trunk Line is \$2,046,990.00. This facility is not listed within the City's Capital Improvement Program and is planned to be constructed by development activity along Meyer Road or those areas beyond Meyer Road that will use this line per the City's Wastewater Master Plan.
- The required surety may be reduced as others either construct segments of the Meyer Trunk Line or post their obligated surety, providing that continuity of service is maintained to provide for serviceability.

Adjustment To Surcharge/Surety

- The surcharge for construction of the 12<sup>th</sup> Avenue Facility, and the required surety for the Meyer Road Line, may be adjusted annually by the Engineering News Report (ENR) index and as appropriate from time to time due to other changing construction costs and/or availability of other funding sources.

C. Transportation. Owner and others completed a Traffic Impact Analysis (TIA) for its original annexation proposal, to aid them and the City in identifying specific traffic mitigation that would be required during development of the annexed properties. This TIA was developed utilizing development plans generated by the Developer. During the annexation request process, the Developers reduced their proposed acreage to be brought into the City. Changing market conditions additionally made their development plans less specific than proposed during development of the TIA. To address the transportation mitigation issues without a completed traffic impact analysis the Owner agrees to the following:

- Owner agrees to complete all roadway frontage improvements and to comply with future traffic impact analysis as part of the development process. Frontage improvements shall consist of typical urban roadway improvements (paving, striping, signage, curb and sidewalk, street lighting, drainage facilities, landscaping, etc.) from the roadway centerline

across the street frontage of the development, including appropriate asphalt tapers to accommodate any roadway widening.

- Owner agrees to complete the internal roadway network on the Described Lands to comply with future traffic impact analysis as part of the development process. This specifically includes that portion of the Highway 41 Backage Road System situated upon the Described Lands to meet the typical urban roadway improvements described above.
- Owner agrees to pay its proportionate share (based upon future traffic impact analysis) for other offsite transportation mitigation, which may be identified based upon traffic level of service and operational requirements established herein. The Owner additionally acknowledges that, unless the parties otherwise agree, development will not be allowed until the improvements identified in the traffic impact analysis are funded and/or constructed as required, regardless of the Developer's proportionate share contribution. The parties nonetheless understand and agree that future traffic impact analysis may detail impacts upon affected transportation facilities that have occurred subsequent to the execution of this Agreement. Such traffic impact analysis may be considered to determine the impact of development activity on adjacent, (i.e., nearby) lands and to calculate the proportionate contribution of the owner(s)/developer(s) of such adjacent lands to the required transportation facilities improvements, whether or not such contribution can be required.
- The levels of service requirement for identified intersections and roadway segments will be as follows:
  - Project or phase build-out level of service 'C' with no movements below 'D.'
  - Project or phase build-out + 10 years-level of service 'D' with no major movements below 'D' and no movements below 'E.'
- Owner acknowledges that development of the properties will require obtaining approvals from the Idaho Transportation Department relative to access from the Department's Transportation Facilities. Additionally, the Owner shall obtain approval from the Department for any frontage improvements or transportation mitigation that affects their facility. Nothing herein shall prevent Owner from seeking from the Department any modification and/or variance to its access requirements as they may from time to time exist.
- Owner agrees to construct, at such time as development occurs north of the existing railroad right of way, a backage road rail crossing to provide for roadway widening and continuity of the transportation network. [Applies to Prairie Properties, LLC/Prairie Crossing West, LLC only.]

**E. Sewer Cap Fee Credits/Traffic Impact Fee Credit/Subsequent User Fees:**

City and Owner understand and acknowledge that development of the Described Lands and adjacent lands will likely occur over a period of time and that adjustment to development plans and financing of required sewer and transportation infrastructure improvements may change as the Described Lands and adjacent lands are actually developed. The Parties recognize the need for flexibility in these matters in order to promote the orderly development of both the Described Lands and adjacent lands. The Parties also recognize that the timing of Owner's development may or may not coincide with development activity upon adjacent lands. As a result, the proportionate contribution to infrastructure improvements by other owners in the affected service area may not be immediately available. The City therefore acknowledges that to the extent reasonably necessary to reimburse Owner for costs expended in excess of Owner's proportionate share of required sewer and transportation infrastructure improvements, Owner may apply to the City in the future pursuant to ordinances, policies and/or statutes then in effect for (a) credit as against some or all of its required future Sewer Cap Fees; (b) reimbursement from Sewer Cap Fees paid by other future development; (c) traffic impact fee credit; and/or (d) reimbursement from Subsequent User Fees. Notwithstanding the foregoing, Owner understands and agrees that there is no guarantee that such approval will be granted or that funding from such other sources will be available.

**3. Construct to City Standards:**

Owner agrees that all improvements required by this Agreement or by City codes shall be built to City standards or to the standards of any public agency providing service to the Described Lands, adhering to all City policies and procedures, including, but not limited to the sanitary sewer improvements, water lines, fire hydrants, storm water management, curbs, sidewalks, and roads. Such policies include extending the utility lines in a manner acceptable to the City to make service available to adjoining lands and to maintain continuity of municipal systems at minimal public cost.

**4. Applicable Standards:**

The Owner agrees that all laws, standards, policies and procedures regarding public improvement construction that the Owner is required to comply with or otherwise meet pursuant to this Agreement or City codes shall be those in effect when construction is commenced. If Owner fails to comply with applicable laws in the course of constructing improvements, public or otherwise, on the lands subject to this Agreement, Owner consents to suspension of issuance of building permits or denial of certificates of occupancy until such compliance is attained.

**5. As-Built Drawings:**

Accurate as-built drawings shall be provided to the City within thirty (30) days of the date of substantial completion of construction. If as-builts are not provided as required by this agreement, City is authorized to suspend further issuance of building permits upon the Described Lands or to discontinue utility service. In no event shall the City accept public improvements for maintenance or allow occupancy of constructed improvements upon the Described Lands until suitable "as-builts" are provided and until planned improvements have complied with inspection requirements and have been accepted for public maintenance or approved for private use. The use of sureties may be allowed when in the public interest and consistent with City code requirements. All required public improvements associated with development of the Described Lands shall be inspected and tested during construction by Owner's engineer with all such costs of testing and inspection to be borne by the Owner. The Owner shall provide the City Engineer with inspection field reports and test results accompanied by a certification that the improvements have been installed in compliance with applicable City requirements. A representative of the City shall be present at the pressure testing of water mains and sanitary sewer mains. The City shall be notified at least twenty-four (24) hours before testing.

**6. Considerations:**

Owner agrees to provide specific consideration to the City in the amounts and at the times specified herein. The sums specified are deemed by the parties to be a reasonable fee for City benefits to the Owner's use or development of its lands annexed hereby, including, but not limited to; public safety, street services, police equipment, community and traffic planning and fire protection equipment/facilities. The following consideration may be used in any manner that the City, in its sole discretion decides. The sums and manner of payment are detailed in Section 6.1.

6.1. At any time following annexation, but not later than prior to issuance of a permit for development on the Described Lands, the Owner thereof shall pay the appropriate annexation fees as adopted by the City Council by resolution and in effect at the time of payment. Both parties agree that this sum is to be paid as an annexation fee, as distinguished from an impact or capital facilities fee, which might otherwise be an obligation associated with development of the Described Lands.

6.2. Upon the proper execution and recordation of this Agreement, the City will prepare for passage an annexation ordinance annexing the Described Lands. The parties agree that until the date of publication of the annexation ordinance, no final annexation of the Described Lands shall occur.



- 6.3. By right-of-way deed of equal date with this Agreement, Owner shall grant right-of-way for future development of Prairie Avenue such that a width of 55 feet from the centerline to edge of right-of-way is provided. Owner shall also grant right-of-way for future development of Highway 41 such that a width of 65 feet from the centerline to edge of right-of-way is provided. Owner shall provide additional rights of way on the Described Lands to accommodate street and roadway design to accommodate its development as required. This covenant may be enforced by specific performance.
- 6.4. By grant of easement of equal date with this agreement, Owner shall grant a 10 foot easement adjacent to Highway 41 and a 15 foot easement adjacent to Prairie Avenue for rights-of-way for utilities, sidewalks, and storm drainage.
- 6.5. Owner agrees to contribute to the City, upon the earlier of (a) issuance of a site construction permit to Owner; or, (b) commencement of construction and installation by the City of wireless communications infrastructure for public safety communications on or in the vicinity of the Described Lands, the sum of Four Thousand Two Hundred Seventeen and no/100 Dollars (\$4,217.00) for the purchase and installation of the same.

**7. Annexation:**

Upon proper execution and recordation of this Agreement, and upon performance of the prerequisite steps called for herein, the City will, to the extent lawfully permitted, adopt and thereafter publish an ordinance annexing the Described Lands.

**8. Phasing of Project:**

All parties recognize that consistent with current City policy, all public improvements to be completed by Owner may be completed in phases consistent with the development of each phase such that each phase can stand alone should the project or development not otherwise be completed.

**9. Covenant to Run with the Land:**

The covenants herein to be performed by Owner shall be binding upon Owner and Owner's heirs, assigns, and successors in interest, and shall be deemed to be covenants running with the land.

10. **Severability:**

Should any provision of this Agreement be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and be interpreted to effectuate the purposes of the entire Agreement to the greatest extent possible.

11. **Merger and Amendment:**

All promises and prior negotiations of the parties merge into this Agreement. The parties agree that this Agreement shall only be amended in writing and signed by both parties. The parties agree that this Agreement shall not be amended by a change in law. The parties agree that this Agreement is not intended to replace any other requirement of City Code and that its execution shall not constitute a waiver of requirements established by City ordinance or other applicable provisions of law.

12. **Enforcement-Attorney's Fees:**

Should either party require the services of legal counsel to enforce compliance with the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and related costs of enforcement.

IN WITNESS WHEREOF, the City of Post Falls has caused this Agreement to be executed by its Mayor and City Clerk, and the Owner has executed this Agreement to be effective the day and year first above written.

CITY OF POST FALLS

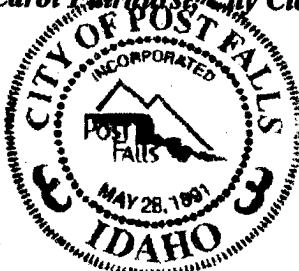
By: *Clay Larkin*

*Clay Larkin* Mayor

Attest:

By: *Carol Fairhurst*

*Carol Fairhurst* City Clerk



OWNER(S): Prairie Properties, LLC, C/O Vision First LLC, an Idaho limited liability company

By: *Randal S. Clarno*

*Randal S. Clarno*, Managing Member

## ACKNOWLEDGEMENTS

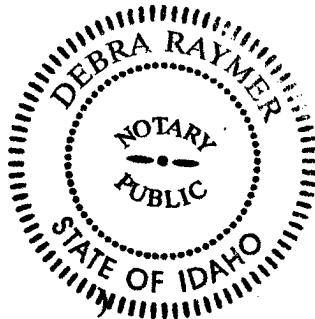
STATE OF IDAHO )

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County of Kootenai )

On this 15<sup>th</sup> day of Dec., 2009, before me, a Notary for the State of Idaho, Personally appeared **Clay Larkin** and **Carol Fairhurst** known, or identified to me to be the **Mayor** and **City Clerk**, respectively of the City of Post Falls, Kootenai County, Idaho, executing the herein instrument, and acknowledged to me that such City of Post Falls executed the same.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal the date and year in this certificate first above written.



Debra Rayer  
Notary Public for the state of Idaho  
Residing at: Post Falls, Idaho  
Commission Expires: 3-30-15

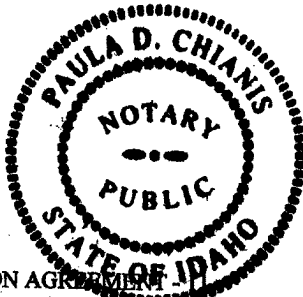
STATE OF IDAHO )

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County of Ada Kootenai )

On this 9<sup>th</sup> day of December, 2009, before me, a Notary for the State of Idaho, personally appeared **Randal S. Clarno** known, or identified to me to be the managing member of the limited liability company that executed this instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal the date and year in this certificate first above written.



Paula D. Chianis  
Notary Public for the State of Idaho  
Residing at: Star, ID  
Commission Expires: Apr 29, 2014

