

**AGREEMENT FOR INCLUSION IN  
SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT  
(GID Form)**

THIS AGREEMENT is made and entered into this 19<sup>TH</sup> day of JUNE, 2020 by and between the South Adams County Water and Sanitation District ("District"), a special district and quasi-municipal corporation of the State of Colorado, and Second Creek Holdings LLC, a Colorado limited liability company, whose address is 9033 East Easter Place #112, Centennial, Colorado 80112 ("Second Creek Holdings") and the City of Commerce City, a Colorado municipal corporation, whose address is 7887 E. 60<sup>th</sup> Avenue, Commerce City, Colorado 80022 ("City") (collectively, "Petitioner," except as specifically noted).

**RECITALS**

WHEREAS, the District currently provides municipal water and wastewater service within its boundaries for the benefit of its residents and property owners located in Adams County, State of Colorado;

WHEREAS, Petitioner is the fee owner of one hundred percent of certain real property (hereinafter, the "Property"), described in **Exhibit A** attached hereto and incorporated herein by this reference;

WHEREAS, the City of Commerce City created the Northern Infrastructure General Improvement District ("NIGID") in November 1997, created the E-470 Commercial Area General Improvement District ("ECAGID") in April 2013, and created the E-470 Residential Area General Improvement District ("ERAGID") in July 2013 (each individually a "GID" and collectively, the "GIDs");

WHEREAS, the District and the GIDs have signed agreements (hereinafter, "IGAs") whereby the District will provide municipal water and wastewater service within the boundaries of the applicable GID to the extent that there are water and sewer taps available and service is in compliance with the Rules and Regulations of the District;

WHEREAS, the Property is located within the projected service area of one of the GIDs and will be required to include into one of the GIDs, as specified by the City of Commerce City in its discretion;

WHEREAS, the Property has been or is in the process of being included in one of the GIDs, as indicated in the heading of this Agreement, and Petitioner desires that the District provide water and sanitation service to the Property;

WHEREAS, the District's Rules and Regulations state that persons whose property is located outside the boundaries of the District, and desire service to the property, are required to file a petition for the inclusion of such land with the District;

WHEREAS, the District is not required to enlarge or extend its boundaries, and all such enlargements and extensions are undertaken in the exercise of its discretion, as a governmental function in the interest of the health, safety and welfare of its residents and property owners;

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WHEREAS, Petitioner recognizes that inclusion of the Property within the District will benefit Petitioner;

WHEREAS, the statutes of the State of Colorado permit the District to impose by agreement specific conditions for the inclusion of any property within the District;

WHEREAS, with this Agreement, Petitioner is filing a petition for inclusion of the Property ("Petition"), and Petitioner has signed a conveyance of all groundwater rights associated with the Property to the District, and Petitioner has agreed to follow all statutory requirements with respect to such inclusion; the Petition is incorporated herein by this reference;

WHEREAS, the District is interested in having the Property included into the District, subject to the Rules and Regulations of the District, as they may be amended, and subject further to the terms and conditions of the IGAs and this Agreement as set forth below; and

WHEREAS, the District will follow the statutory requirements concerning the Petition and has authorized the execution of this Agreement;

WHEREAS, a portion of the Property was previously included within the District pursuant to Order of District Court, Adams County, Colorado dated October 9, 2018 and recorded with the Adams County Clerk and Recorder at Reception No. 2018000083671 (the "Prior Order") and made subject to an Agreement for Inclusion dated June 13, 2018 and recorded with the Adams County Clerk and Recorder at Reception No. 2018000083670 (the "Prior Agreement");

WHEREAS, the intent of this Agreement is to supplement the Prior Agreement and subject to the terms of this Agreement all of the property which is part of the Petitioner's project but which might have not been included in the legal description made a part of the Prior Agreement, and the intent of this Agreement is not to supersede or replace the Prior Agreement with respect to the property subject to the Prior Agreement; and

WHEREAS, the Board of Directors of the District has adopted or will consider adopting an Order approving the inclusion (with or without conditions); and the recitals, determinations, and terms of the Order will be incorporated herein by this reference.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and stipulations expressed herein, the District and Petitioner agree as follows with respect to the Property:

1. Petitioner represents and warrants to the District that it is the fee owner of one hundred percent of the Property; provided, the City's representation and warranty extends only to that interest provided through the dedication of property through the subdivision plats associated with the Property. Petitioner acknowledges that the District will publish notices of public hearings on the Petition for Inclusion, and conduct such hearings in accordance with statutory requirements.
2. Petitioner hereby recognizes and agrees that prior to or at inclusion of the Property into the District, any and all groundwater rights underlying the Property shall be transferred to the District by an executed document entitled Conveyance of Groundwater Rights. Such

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groundwater rights are described in the Conveyance of Groundwater Rights, incorporated herein by this reference.

3. Petitioner hereby recognizes and agrees that inclusion of the Property does not entitle service to the Property and that Second Creek Holdings shall, as a precondition to service and at the sole discretion of the District, either: (1) acquire and dedicate to the District sufficient senior surface water rights, other water resources, or facilities to serve the Property ("Water Resources"); or, (2) pay the District for costs of acquiring such Water Resources, the nature and sufficiency of which shall be determined by the District at its sole discretion, by an executed document entitled Water Resources Agreement. Due to the scale of Second Creek Holdings' project on the Property, the District will be willing to review development plans and grant approvals for phases of the project so long as Second Creek Holdings has first entered into a Water Resources Agreement for all of the phase related to the plans to be reviewed.
4. Petitioner hereby recognizes and agrees that pursuant to the District's Rules and Regulations, Second Creek Holdings may be required, at any time and in the sole discretion of the District, to construct and use a separate non-potable water system in order for the District to deliver non-potable water to Second Creek Holdings for irrigation uses.
5. Petitioner hereby recognizes that upon inclusion, the District's obligation to serve the Property is subject to the terms of this Agreement, the District's Rules and Regulations as they may be amended, and the IGAs entered into between the District and the GID in which the Property is included. Petitioner must take all steps to include the Property referenced in **Exhibit A** above into the applicable GID. Additionally, the District derives and furnishes part of its treated water supply by contract from the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water"). Water service to the Property may also be governed by and subject to this Denver Water contract, to any subsequent amendments or successor contracts, and to Denver Water's Operating Rules, Policies and Engineering Standards, as now or hereafter constituted.
6. Petitioner recognizes that there are a limited number of water taps available to the GIDs, that the District may be required to enlarge its wastewater collection and treatment facilities, and that the District makes no warranty regarding the number of water and sewer taps which may be available to the Property.
7. Inclusion into the District does not guarantee service to the Property, as the District may be limited in the number of new connections or taps that may be made to its system because of allocations or other restrictions imposed by Denver Water or by other factors resulting in the unavailability of water supply. Service may further be limited or delayed because of the location or capacity limitations of existing lines and facilities. Second Creek Holdings may be required at its cost to extend public water and sewer mains and related facilities to the Property. Second Creek Holdings accepts and agrees to be bound by the foregoing limitations and requirements, and agrees to extend the water and sewer service lines from the facilities constructed or to be constructed as part of the Northern Range GID Project or by the ECAGID or ERAGID to the Property, at its sole cost and expense. Such water and sewer line extensions and related infrastructure shall be constructed and installed in accordance with the District's Rules and Regulations. Additionally, Second Creek Holdings

agrees to convey at no cost to the District all easements necessary for construction and maintenance of the District's water and sewer main lines and associated facilities on the Property.

8. Second Creek Holdings or his/her/its successors shall pay all rates, fees, charges, and tax levies imposed by the District, as such rates, fees, charges, and tax levies currently exist or are imposed in the future, including without limitation tax levies for existing revenue bonds and all present and future indebtedness of the District.
9. After approval of an Order granting inclusion by the Board of Directors of the District, and entry of an Order of Inclusion by the Adams County District Court that is recorded in the Office of the Adams County Clerk and Recorder, the Property shall be included into the District, subject to the terms and conditions set forth herein, the duly promulgated Rules and Regulations of the District and the laws of the State of Colorado, as such terms, Rules and Regulations and/or laws currently exist or are subsequently amended.
10. Petitioner and the District hereby acknowledge this Agreement may be enforced in law or in equity by a decree of specific performance, damages, foreclosure of liens or other such legal and equitable relief as may be available, subject to the provisions of the statutes of the State of Colorado. The prevailing party shall be entitled to collect its attorney fees and costs in any action necessary to enforce the terms of this Agreement. Any such action shall lie within Adams County District Court, State of Colorado.
11. The provisions of this Agreement shall be deemed to survive the transfer of the Property, shall be binding upon the respective parties' successors, transferees and assigns, and shall be and remain covenants running with the Property. This Agreement may be recorded in the office of the Clerk and Recorder of the county where the Property is located before or after the Court orders the inclusion.
12. In the event the Court rejects the inclusion, the parties will consider continuing to attempt to include the property or may abandon inclusion and terminate this Agreement, each in its sole discretion. If either party terminates this Agreement, the District will cooperate with the Petitioner to cause evidence of the termination of this Agreement to be recorded with the Clerk and Recorder.
13. The obligations of the City and the District under this Agreement are subject to annual appropriations that are a legislative decision of their respective governing bodies. Neither the City nor the District, by this Agreement, binds future boards to make such appropriations. All obligations of the City and the District under this Agreement, whether direct or contingent, will only extend to payment of monies duly and lawfully appropriated and encumbered for the purpose of this Agreement through the respective entity's legally required budgeting, authorization, and appropriation process. Further, neither the City nor the District, by this Agreement, creates multiple fiscal year obligations or debt either within or without this Agreement. The failure of either entity's governing body to budget, authorize, appropriate, or encumber monies to satisfy any obligation of this Agreement shall not constitute a breach by that entity.

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14. This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter hereof, and supersedes all prior conversations, proposals, negotiations, understandings and agreements, whether written or oral; all of which are merged herein. If any portion of this Agreement shall be deemed to be ineffective or without force and effect by any court of competent jurisdiction, then the invalidity or unenforceability of such provision shall not affect the enforceability of the other provisions hereof. Notwithstanding the foregoing, this Agreement shall not be deemed to modify or supersede any other agreement between the City and the District.
15. The provisions of this Agreement are deemed to be unique and special with regard to the subject Property, and do not create a precedent for future inclusions or matters pertaining to other properties.
16. The intent of this Agreement is to supplement the Prior Agreement and subject to the terms of this Agreement all of the property which is part of the Petitioner's project but which might have not been included in the legal description made a part of the Prior Agreement; and the intent of this Agreement is not to supersede or replace any of the terms of the Prior Agreement with respect to the property subject to the Prior Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date indicated above.

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Ph

By: [Signature]  
[Signature of Petitioner]

9033 E. Easter Place #112  
[Street Address]

Centennial, CO 80112  
[City, State, Zip Code]

If Petitioner is a Corporation or other entity:

**SECOND CREEK HOLDINGS, LLC, a  
Colorado limited liability company**

By: [Signature]

Name: Joel H. Farkas

Its: Manager

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

Name: Thomas R. Kowalski

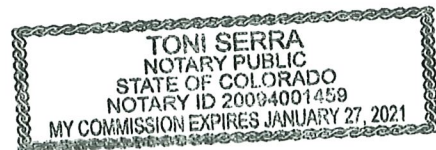
Its: Manager

STATE OF COLORADO )  
COUNTY OF Arapahoe ) ss.

The foregoing instrument was acknowledged before me this 22<sup>ND</sup> day of June, 2020, by Joel H. Farkas as Manager of Second Creek Holdings, LLC.

Witness my hand and official seal.

[Signature]  
Notary Public



My commission expires: 01-27-2021

By: \_\_\_\_\_  
[Signature of Petitioner]

\_\_\_\_\_  
[Street Address]

\_\_\_\_\_  
[City, State, Zip Code]

If Petitioner is a Corporation or other entity:

**SECOND CREEK HOLDINGS, LLC**, a  
Colorado limited liability company

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

Name: Joel H. Farkas

Its: Manager

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

Name: Thomas R. Kowalski

Its: Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Joel H. Farkas as Manager of Second Creek Holdings, LLC.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



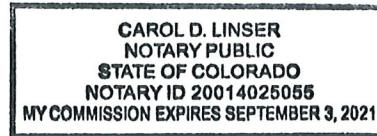


STATE OF COLORADO     )  
  ) ss.  
COUNTY OF   ~~Adams~~  )

The foregoing instrument was acknowledged before me this   19<sup>TH</sup>   day of  
  June  , 20   20  , by Thomas R. Kowalski as Manager of Second Creek Holdings,  
LLC

Witness my hand and official seal.

  Carol D. Linser    
Notary Public



My commission expires:   9/3/2021  

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Commerce City, CO 80022

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[City, State, Zip Code]

If Petitioner is a Corporation or other entity:

City of Commerce City  
[Company Name]

By \_\_\_\_\_

Its: City Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as City Manager of City of Commerce City.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

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**SOUTH ADAMS COUNTY WATER AND  
SANITATION DISTRICT**

By: \_\_\_\_\_  
Mizraim Cordero, President

Attest: \_\_\_\_\_  
B. JoAnn Moss, Secretary

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF ADAMS     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Mizraim Cordero, President, and B. JoAnn Moss, Secretary, of the South Adams County Water and Sanitation District.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

*Ph*

EXHIBIT A

**PARCEL A:**

SECOND CREEK FARM FILING NO. 1, AMENDMENT NO. 1, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 21, AND THE EAST HALF OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 30, 2019 AT RECEPTION NO. 2019000071790, COUNTY OF ADAMS, STATE OF COLORADO, EXCEPT,

LOTS 1 THROUGH 30, INCLUSIVE, BLOCK 1,  
LOTS 1 THROUGH 30, INCLUSIVE, BLOCK 2,  
LOTS 1 THROUGH 30, INCLUSIVE, BLOCK 3,  
LOTS 1 THROUGH 30, INCLUSIVE, BLOCK 4,  
LOTS 1 THROUGH 30, INCLUSIVE, BLOCK 5,  
LOTS 1 THROUGH 22, INCLUSIVE, BLOCK 6  
TRACTS AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL & M.

**PARCEL B:**

SECOND CREEK FARM FILING NO. 2, LOCATED IN THE EAST HALF OF SECTION 21, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 28, 2006 AT RECEPTION NO. 20060428000434700, COUNTY OF ADAMS, STATE OF COLORADO

**EXCEPT,**

SECOND CREEK FARM FILING NO. 2 - AMENDMENT NO. 1, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 10, 2020 AT RECEPTION NO. 2020000052269, COUNTY OF ADAMS, STATE OF COLORADO.

**PARCEL C:**

SECOND CREEK FARM FILING NO. 2 - AMENDMENT NO. 1, LOCATED IN THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 10, 2020 AT RECEPTION NO. 2020000052269, COUNTY OF ADAMS, STATE OF COLORADO.

I, BRIAN J. PFOHL, A SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.

BRIAN J. PFOHL, P.L.S. 38445  
FOR AND ON BEHALF OF MANHARD CONSULTING

