

## WATER RESOURCES AGREEMENT

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between the South Adams County Water and Sanitation District, a political subdivision and quasi-municipal corporation of the State of Colorado (“District”), and the City of Commerce City, a municipal corporation (“City”) (collectively the “Parties”).

### 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, Colorado; and

WHEREAS, the City owns and operates certain real property for the purpose of providing parks and recreation for residents within the Parties’ joint boundaries, as described in Exhibit A attached hereto and incorporated herein (hereinafter the “Property”); and

WHEREAS, the City, by a vote of qualified electors in November, 1997, created the Northern Infrastructure General Improvement District (hereinafter “GID”); and

WHEREAS, the District and GID have signed agreements whereby the District will provide municipal water and wastewater services within the boundaries of the GID to the extent that there are water and sewer taps available; and

WHEREAS, some of the Property is or will be included in the GID and some of the Property will be located in the District’s General Service Area (“GSA”), and all of the Property is located in the District, so that the District can provide municipal water services to the Property; and

WHEREAS, Article II, Rule 1.5 of the District’s Rules and Regulations require, among other things, that “an owner seeking to acquire water and wastewater service from the District and/or seeking to be included within the District’s boundaries shall enter into a Water Resources Agreement with the District by which the owner shall dedicate to the District water rights, water storage or related facilities or the equivalent thereof sufficient to provide water service to the subject property” (“Water Resources”); and

WHEREAS, the District has determined that there are sufficient groundwater resources available and the City has dedicated sufficient senior water rights to allow for the provision of separate irrigation system supplies to the Property necessary to serve the 33.1 equivalent residential units (“ERUs”) for irrigation, as referenced below; and

WHEREAS, the City recognizes inclusion of the Property within the District is required before service and benefits the City; and

WHEREAS, water service to the Property shall be subject to the District's Rules and Regulations, as they may be amended, and subject further to the terms and conditions of any applicable Inclusion Agreement and this Agreement as set forth below; and

WHEREAS, it is in the best interest of the District, and its landowners and customers, that this Agreement be entered.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and provisions expressed herein, the District and the City agree as follows:

1. Augmentation Water. The City has conveyed to the District, free and clear of all liens, encumbrances and assessments, by both special warranty deeds and stock assignments, the following water rights to be used for augmentation ("Water Interests"):
  - 1.1 Five paired shares in the Burlington Ditch, Reservoir and Land Company and the Wellington Reservoir Company and associated water rights were conveyed to the District on January 20, 2016, for which the District recognizes a credit for an estimated 14.9 acre feet of consumptive use water, sufficient for 33.1 irrigation ERUs. The five shares of the Burlington Ditch, Reservoir and Land Company stock are evidenced by Stock Certificate Nos. 3816 and 3817, and the five shares of the Wellington Reservoir Company stock are evidenced by Stock Certificate Nos. 1430 and 1432. The City also provided dry-up covenants and affidavits of historical use at closing.
2. Payment in Lieu of Dedication of Storage. Concurrent with entering into this Agreement, the City has made a payment to the District in the amount of \$1,750 per Irrigation ERU to compensate for the storage component of the District's water connection fee, for a total payment of \$57,925.
3. Irrigation ERUs. In exchange for dedication of the Water Interests, the City shall have the right to purchase water connections for a total of 33.1 irrigation only ERUs ("Irrigation ERUs"). The District will file an application for change of use of the Water Interests with the Colorado Water Court. If the Water Interests do not yield 14.9 acre-feet of consumptive use credit per year, on average, as determined by the court, the number of Irrigation ERUs awarded to the City shall be adjusted up or down, so that the City retains 2.22 Irrigation ERUs per acre-foot of consumptive use credit. The payment for storage will also be adjusted accordingly.
4. Credits for Water Rights. In consideration of the foregoing dedication and payment, the District hereby agrees to provide the City with a \$5,272.00 water resources credit and a \$1,750 storage credit per Irrigation ERU, toward the

purchase of each ERU tap for a total of 33.1 Irrigation ERUs. Because the City is not expected to have to construct the portions of the dual water system surrounding the Property, no credit therefor will be provided against the purchase of the tap. When the City applies for a tap for the Property from the Irrigation ERUs, it shall pay the then-current Water Connection Fee, and all other applicable charges, minus a \$5,272.00 water resources credit and a \$1,750 storage credit per Irrigation ERU, as adjusted by the percentage increase in the water resources and storage components of the Water Connection Fee on the balance of the amount owing from the date of this Agreement to the date of purchase of the tap.

5. **Water Facilities.** Some of the City's Property may be located in an area that will not be served by a dual water supply system. In those areas, both potable and irrigation needs will be currently served by a single potable water system. In the future if the District extends a non-potable irrigation water system to the Property ("Irrigation Water System"), or develops an Irrigation Water System on the Property, the irrigation tap will be switched over to the Irrigation Water System at that time at the District's expense. The City will not be required to pay an additional tap fee nor any other fees nor be entitled to any credits or reimbursements related to the switchover at that time. The process for switching a potable water tap to a connection to the Irrigation Water System will be as follows:

5.1 If, in the future, the District intends to switch a tap on the Property to the Irrigation Water System, the District shall install, at its sole cost, the main water delivery facilities for the Irrigation Water System in accordance with the September 2011 Water System Master Plan Update of the District, as such plan may be revised from time to time by the District. The District shall disconnect the existing potable irrigation water tap and connect it to the non-potable Irrigation Water System. The District agrees to restore the City's property to substantially the same condition as existed prior to the disconnection and connection of said water systems and to replace any of the City's facilities which are damaged by the District. The District shall notify the City a reasonable time in advance of any such disconnection and the supply of irrigation water shall not be interrupted for more than three consecutive days.

6. **Dual Pipe Systems.** The majority of the City's park sites will be located in areas that will be served by a dual distribution system. The "dual pipe" water supply system, which shall consist of: (1) the Potable Water System, constituting piping for delivery of potable water for indoor uses, including but not limited to, drinking water facilities, bathing facilities, and other sanitary facilities, and outdoor vehicle washing and other non-irrigation outdoor uses, and (2) the Irrigation Water System, constituting piping for delivery of irrigation water for outdoor irrigation purposes only. The Potable Water System and the Irrigation Water System shall be constructed pursuant to the District's specifications. The

District may, at any time, deliver potable water for irrigation use through the Irrigation Water System in lieu of delivery of irrigation water.

- 6.1 In order to serve properties from the dual distribution system, the District shall install, at its sole cost, the main water delivery facilities for the Irrigation Water System in accordance with the September 2011 Water Systems Master Plan Update, as such plan may be revised from time to time by the District.
- 6.2 The City shall install, according to the District's then-current specifications, and at the City's respective sole cost, all piping and facilities required for delivery of water from the Irrigation Water System installed by the District to each lot or parcel to be served by the water supply.
- 6.3 As to extensions for the Potable Water System necessary to serve the Property, the City shall be required to extend water mains or water lines, and construct related facilities at its own cost, as set forth in the District's Rules and Regulations.
- 6.4 Upon completion by the City of construction of such dual water supply lines, the District shall make appropriate inspection and notation of its records to reflect such construction. Ownership and responsibility for maintenance, repair and replacement shall be pursuant to the District's Rules and Regulations.
7. Determinations of ERUs. The issuance of water connection taps for these 33.1 Irrigation ERUs shall be subject to the payment of all remaining tap fees, and compliance with the District's Rules and Regulations and the District's Design Specifications and Standards. The District will determine the number of ERUs for each tap or park site by utilizing the then-current tap allocation schedule, or a site specific ERU tap allocation based on actual calculated demands whichever is determined to be higher.
8. Assignments. Any or all of the ERU Irrigation credits hereunder may be assignable by the City to other City-owned park property served by the District or third parties upon the consent of the District, which consent shall not be unreasonably withheld.
9. District's Rules and Regulations. The City agrees to comply with all other provisions of the District's Rules and Regulations, as they may be amended by the District from time to time.
10. Default. The District and the City hereby acknowledge that this Agreement may be enforced by law or in equity by a decree of specific performance, damages,

foreclosure of liens, the withholding of public water for lack of payment 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 also be entitled to collect its attorney's fees and costs in any action necessary to enforce the terms of this Agreement. Any such action shall lie in the Adams County District Court, State of Colorado.

11. Survival of Terms. The provisions of this Agreement shall be deemed to survive the transfer of the Water Interests which are the subject of this Agreement and, shall be binding on the respective party's successors, transferees and assigns.
12. Entire Agreement. 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.
13. Precedence. 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 water resource agreements or other matters pertaining to other properties, including those owned by the City.
14. Future Water Projects. The terms of participation in future water supply projects will be dealt with in subsequent water resources agreements.

*[Remainder of page intentionally blank]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date indicated above.

SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT

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Aaron Phillips, President

Attest

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B. JoAnn Moss, Secretary

City of Commerce City

By: \_\_\_\_\_  
Sean Ford, Mayor

Attest

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City Clerk

APPROVED AS TO FORM AND  
CONTENT:

By: \_\_\_\_\_  
City Attorney