

**CONTRACT TO BUY AND SELL FRICO  
ERU WATER AND OPTION CREDITS**

**1. PARTIES AND WATER RIGHTS.** The City of Commerce City Northern Infrastructure General Improvement District (“Seller” or “NIGID”), agrees to sell, and SDM Investments, LLC (“Buyer”), agrees to buy, and the City of Commerce City (“Assignor”) agrees to assign to Buyer, on the terms and conditions set forth in this Contract, the following described FRICO ERU Water and Option Credits (“ERUs”) as those terms are defined in the Agreements referenced below:

25.00 ERUs pursuant to the Revised Plan B Project Participant Agreement, 6 year payment plan, attached hereto as Exhibit 1 and incorporated by reference herein at a price of \$5,000.00 per ERU.

**2. PURCHASE PRICE AND TERMS.** The purchase price shall be as follows:

A total of \$125,000.00 plus any closing costs, to be paid by Buyer at closing in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds, certified check, savings and loan teller’s check, and cashier’s check (Good Funds).

There shall be one closing for the purchase of said ERUs.

**3. DEDICATION OF PROPERTY.** In consideration of this Contract, before June 23, 2016, Buyer, BCX Development Partners Inc. (“BCX”), or any entity controlled by either of them or their common ownership, shall dedicate to the Assignor, without charge, all right-of-way, easements, and property interests owned by any of them adjacent to Highway 2, 112th Avenue, and Potomac Street necessary for the Assignor to construct public improvements related to those roads on such property (“Property”). If this condition is not satisfied, in its entirety, Buyer’s rights under this Contract shall terminate without the need for further action by any party. The termination of the Contract, for any reason, shall not affect the obligation to dedicate such Property.

**4. ADDITIONAL PROPERTY.** Buyer and BCX shall use their best efforts to obtain the dedication to the Assignor by Catellus CC Note, LLC of additional right-of-way, easements, and property interests owned by Catellus CC Note, LLC adjacent to Highway 2, 112th Avenue, and Potomac Street necessary for the Assignor to construct public improvements related to those roads on such property.

**5. ASSIGNMENTS.** This Contract shall only be assignable by Buyer with Seller’s prior written consent and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

**6. SACWSD CONTINGENCY.** This Contract is expressly contingent upon the acknowledgement of credits by the South Adams County Water and Sanitation District (“SACWSD”) and approval of the Assignment from Assignor to Buyer. If this contingency is not satisfied by closing, this Contract shall be terminated and all further rights and obligations under this Contract shall terminate, except for paragraphs 3 and 4.

**7. DATES OF CLOSINGS.** The date of closings shall be June 30, 2016, unless extended in writing by Seller and Buyer. The hour and place of the closings shall be as designated by Seller and Buyer.

**8. TRANSFER OF TITLE.** Subject to tender or payment at each closing as required herein and compliance by Buyer with the other terms and provisions hereof, the City of Commerce City ("Assignor") shall execute and deliver an Assignment of the ERUs generally in the form of the Assignment attached hereto as Exhibit 2 and incorporated by reference herein, on each closing, conveying said ERUs free and clear of all liens, encumbrances and past assessments and warranting title to said ERUs. Assignor shall also endorse such other documentation as may be reasonably required by SACWSD to effect said transfer. Buyer shall pay any fee required to transfer the shares on the books and records of FRICO.

**9. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid shall be paid at or before each closing from the proceeds of this transaction or from any other source.

**10. ASSIGNOR'S WARRANTY.** Assignor hereby warrants that it is fully authorized to convey said ERUs to Buyer. Said warranty shall survive the closing hereof and the transfer of the ERUs from Assignor to Buyer.

**11. CLOSING COSTS, DOCUMENTS AND SERVICES.** Buyer shall pay all closing costs for this conveyance, exclusive of Seller's and Assignor's legal fees.

**12. TIME OF ESSENCE/REMEDIES.** Time is of the essence hereof. If any obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

**(a) If Buyer is in Default:**

Seller may elect to treat this Contract as canceled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Seller, and Seller may recover such damages as may be proper, or Seller may elect to treat this Contract as being in full force and effect and Seller shall have the right to specific performance or damages, or both.

**(b) If Seller is in Default:**

Buyer may elect to treat this Contract as canceled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

**(c) Costs and Expenses.**

Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation arising out of this Contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

**13. RECORDING.** Any party may cause this Contract to be recorded in the real estate records of the Clerk and Recorder for Adams County, Colorado. The failure to record this Contract shall not affect the validity of the Contract.

**14. RECOMMENDATION OF LEGAL COUNSEL.** By signing this document, Buyer, Seller and Assignor acknowledge that this document has important legal consequences and that the examination of title and consultation with legal and tax or other counsel is recommended before signing this Contract.

**15. TERMINATION.** In the event this Contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder except as expressly provided.

**16. NOTICE TO BUYER.** Any notice to Buyer shall be effective when received by Buyer or three (3) days after having been sent by U.S. Mail with postage prepaid to the address of Buyer given below.

**17. NOTICES TO SELLER AND ASSIGNOR.** Any notice to Seller or Assignor shall be effective when received by Seller or Assignor or three (3) days after having been sent by U.S. Mail with postage prepaid to the address of Seller or Assignor given below.

**18. MODIFICATION OF THIS CONTRACT.** No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

**19. ENTIRE CONTRACT.** This Contract constitutes the entire Contract between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract.

(Signatures contained on next page(s).)

**SELLER:** CITY OF COMMERCE CITY  
NORTHERN INFRASTRUCTURE  
GENERAL IMPROVEMENT DISTRICT

APPROVED AS TO FORM:

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

\_\_\_\_\_  
General Counsel

ATTEST: \_\_\_\_\_  
Secretary

Date of Seller's Signature: \_\_\_\_\_

Seller's Address: 7887 E. 60th Avenue, Commerce City, CO 80022

**ASSIGNOR:** CITY OF COMMERCE CITY

APPROVED AS TO FORM:

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

\_\_\_\_\_  
City Attorney

ATTEST: \_\_\_\_\_  
City Clerk

Date of Assignor's Signature: \_\_\_\_\_

Assignor's Address: 7887 E. 60th Avenue, Commerce City, Colorado 80022

**BUYER:** SDM INVESTMENTS, LLC

By: \_\_\_\_\_  
Title: Manager

Date of Buyer's Signature: \_\_\_\_\_

Buyer's Address: 7108-M South Alton Way, Englewood, CO 80112

**BCX:** BCX DEVELOPMENT PARTNERS INC.

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

Date of BCX's Signature: \_\_\_\_\_

Buyer's Address: 7108-M South Alton Way, Englewood, CO 80112

REVISED  
PLAN B PROJECT  
PARTICIPANT  
WATER RESOURCES  
AGREEMENT

BETWEEN

CRAIG RANCH GOLF COURSE, LLC,  
a Nevada limited liability company,

LAS VEGAS GAMING INVESTMENTS, LLC  
a Nevada limited liability company,

and

SOUTH ADAMS COUNTY  
WATER AND SANITATION DISTRICT,  
a Colorado special district, also acting in an enterprise capacity pursuant to its  
WATER AND SEWER ENTERPRISE

**EXHIBIT 1**

## REVISED PLAN B PROJECT PARTICIPANT WATER RESOURCES AGREEMENT

This Revised Plan B Project Participant Water Resources Agreement ("Revised Agreement") is entered into by and between CRAIG RANCH GOLF COURSE, a Nevada limited liability company, LAS VEGAS GAMING INVESTMENTS, a Nevada Limited Liability Company (together, "Participant") and SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT, a Colorado special district, acting in its enterprise capacity pursuant to the SOUTH ADAMS WATER AND SEWER ENTERPRISE (collectively referred to as the "District"), and constitutes the Parties' agreement to the following:

### *RECITALS*

WHEREAS, Participant is the owner of, or has a contract or option to purchase, land located within the District as generally depicted in Exhibit A attached hereto; and

WHEREAS, pursuant to the District's Rules and Regulations, the inclusion by the District of land owned or to be acquired by Participant requires that water resources agreements be entered into providing for the dedication of water; and

WHEREAS, based on the FRICO Participant Water Resources Agreement dated November 2, 2001, ("the Original Agreement"), the District has entered into an Amended Stock Purchase Agreement dated September 15, 2006 with Farmers Reservoir and Irrigation Company ("FRICO"), Burlington Ditch and Land Company ("Burlington") and Henrylyn Irrigation District ("Henrylyn") to purchase water ("FRICO Agreement"), attached hereto as Exhibit B, that is the subject of a Settlement Agreement among the City and County of Denver ("Denver") and FRICO, Burlington and Henrylyn dated August 31, 1999 ("Denver Contract"); and

WHEREAS, the District has entered into a water delivery agreement with the Denver Water Board dated September 8, 2006 for the direct delivery of water from Denver Water to the District ("the Delivery Agreement"); and

WHEREAS, the District has determined that it currently has available 777 acre-feet of consumptive use credit water, that when combined with the Denver Contract water to be obtained pursuant to the FRICO Agreement, yields a total project supply of 5,777 acre-feet; and

WHEREAS, the District has determined from its planning that each acre-foot of Plan B Project water can supply 3.77 equivalent residential units for both in-house domestic use and outdoor irrigation use; and

WHEREAS, the District has determined that the water to be purchased and delivered pursuant to the Plan B Project would be suitable for satisfaction of water dedication requirements of the District for water service to land within the District subject to the terms of this Agreement; and

WHEREAS, the Plan B Project requires substantial capital investment over the next 20 years to be fully implemented, and the District is unable to commit to such investment absent the agreement of Participant and other participants to provide funding pursuant to the conditions of this Agreement; and

WHEREAS, the Parties desire to specify the terms for the District to provide ERU Water Credits, as defined herein, in exchange for Participant funding the purchase of a portion of the Plan B Project, and to delineate conditions under which such ERU Water Credits may be used to obtain ERU Water Connections, as defined herein.

WHEREAS, pursuant to an Assignment and Bill of Sale dated October 14, 2004 ("the Assignment"), which the District approved on October 21, 2004, Participant succeeded in interest to a portion of rights under the Plan B Project. Attached to this Revised Agreement is Schedule 2, which specifies Participant's Plan B Project Participation Amount, as obtained via the Assignment and reflects Participant's payment requirements and resulting ERU Water Credits as of the date of this Revised Agreement based upon Participant's Participation Amount; and

WHEREAS, the District's implementation of the Plan B Project under the FRICO Agreement and the Delivery Agreement requires revisions to the Original Agreement, which this Revised Agreement supersedes and replaces; and

NOW THEREFORE, in consideration of the mutual covenants and promises between the Parties, which the Parties acknowledge and agree constitute adequate consideration, with such consideration having been received, the Parties agree as follows with the foregoing Recitals being incorporated as part of this Revised Agreement by this reference:

## ARTICLE 1 DEFINITIONS

1.1 "BFI Rebate Fees" are those fees charged to owners, developers, and builders for property benefiting from the BFI Water and Wastewater Facilities Extension described in the Resolution of the Board of Directors of South Adams County Water and Sanitation District Approving the BFI Rebate Fee adopted February 13, 2002 ("BFI Resolution"). A schedule of BFI Rebate Fees, as well as a map depicting properties benefiting from the BFI Water and Wastewater Facilities Extension, are attached hereto as Exhibit C.

1.2 "BFI Water and Wastewater Facilities Extension Costs" are those costs BFI Waste Systems of North America, Inc. ("BFI") incurred in constructing the substantial public water and wastewater main line extensions described in the BFI Resolution and that the District resolved to rebate to BFI in the BFI Resolution.

1.3 "ERU" is an equivalent residential unit. The District has determined that each acre-foot of Plan B Project water can supply 3.77 ERUs for both in-house domestic and outdoor irrigation uses.

1.4 "ERU Water Connection" is the potable and irrigation water connection to a single family residential structure or equivalent, all as set forth in the District's Rules and Regulations. Participant or its successors or assigns may obtain ERU Water Connections in accordance with paragraph 3.2 of this Revised Agreement and by paying all required fees as described in paragraph 3.4 of this Revised Agreement.

1.5 "ERU Water Credit" is a credit in Participant's favor in the District's financial records resulting from Participant's Installment Payments. An ERU Water Credit consists of: (1) an ERU Potable Water Credit, and (2) an ERU Irrigation Water Credit. Pursuant to, and in accordance with the terms and conditions of this Revised Agreement, the District will record in the District's financial records the ERU Potable Water Credits and ERU Irrigation Water Credits being allocated to Participant as Participant makes its annual FRICO Installment and SACWSD Installment Payments. These ERU Water Credits may be used only for participant lands located within the District's boundaries, as such participant lands are depicted on Exhibit A, except as exchanged pursuant to the terms of this Revised Agreement. Upon their recording in the District's financial records, ERU Water Credits will be available for surrender under paragraph 3.2(b) of this Revised Agreement, subject to any assignments and the provisions of this Revised Agreement, including, but not limited to, a Connection Allocation, described in paragraph 4.5 of this Revised Agreement.

a) Connection of a single family residential structure to the District's water system requires: one ERU Potable Water Credit, one ERU Irrigation Water Credit, and payment of Fees described in this Revised Agreement.

b) Commercial, irrigation, multi-family and other uses shall require a combination of ERU Potable Water Credits and/or ERU Irrigation Water Credits as required for that specific use.

1.6 "Incremental Water Payment" is the rate per ERU at which Participant may obtain ERU Water Credits and corresponding ERU Water Connections from the District under this Revised Agreement.

a) The Incremental Water Payment for ERU Water Connection Permits acquired from Participant's Optioned FRICO Participation Amount is \$3,183.

b) The Incremental Water Payment for ERU Water Connection Permits acquired from Participant's SACWSD Participation Amount is \$3,183 as of the date of execution of this Revised Agreement, but the incremental cost of this water will increase by 3.5 percent annually beginning November 27, 2008 and each November 27 thereafter.



1.7 "Installment Payment" is the amount Participant must pay to the District annually toward its Plan B Project Participation Amount. Each year the District will record in its financial records ERU Water Credits in favor of Participant for the additional amount of the Plan B Project paid for in the previous year.

a) "FRICO Installment Payment" is the amount Participant must pay to the District annually toward its Optioned FRICO Participation Amount. In determining Participant's FRICO Installment Payment for any given year, Participant shall receive credit against such FRICO Installment Payment for the sum of any Incremental Water Payments, as defined in paragraph 1.6(a) of this Revised Agreement, made by Participant or its assigns through September 25 of that year.

b) "SACWSD" Installment Payment" is the amount Participant must pay to the District annually toward its SACWSD Participation Amount. The SACWSD Installment Payment will increase by 3.5 percent annually beginning November 27, 2008 and each November 27 thereafter. In determining Participant's SACWSD Installment Payment for any given year, Participant shall receive credit against such SACWSD Installment Payment for the sum of any Incremental Water Payments, as defined in paragraph 1.6(b) of this Revised Agreement, made by Participant or its assigns through September 25 of that year.

1.8 "Option Fee" is the sum of Participant's Option Payments, including the annual increases thereto, divided by Participant's Optioned FRICO Participation Amount (in ERUs). As described in paragraph 3.2 of this Revised Agreement, Participant or its assigns must pay the Option Fee only to obtain ERU Water Connections from Participant's Optioned FRICO Participation Amount and only when Participant's Option Fee Credits have been exhausted in any given year.

a) For that portion of Participant's Optioned FRICO Amount that Participant has committed to a 6 year Payment Schedule, the Option Fee is \$471.

b) For that portion of Participant's Optioned FRICO Amount that Participant has committed to a 15 year Payment Schedule, the Option Fee is \$1,387.

The District reserves the right to make future adjustments to the Option Fee as are necessary in its reasonable discretion to meet the District's obligations to FRICO under the FRICO Agreement. In the event that the District makes such changes, it shall within fifteen (15) days of making such adjustment notify Participant in accordance with paragraph 6.3 of this Revised Agreement.

1.9 "Option Fee Credit" is a credit recorded in the District's financial records in favor of Participant resulting from Participant's annual Option Payments.

a) For Option Payments made in association with rights to be exercised over six years, Participant will receive one Option Fee Credit for every \$471 of the Option Payment.

b) For Option Payments made in association with rights to be exercised over fifteen years; Participant will receive one Option Fee Credit for every \$1,387 of the Option Payment.

1.10 "Option Payment" is the amount Participant must pay to the District annually to maintain its option to make Installment Payments and receive ERU Water Credits and ERU Water Connections under this Revised Agreement. The Option Payment will increase by 3.5 percent annually, beginning November 27, 2007 and each November 27 thereafter. Participant shall receive credit against its Option Payment for the sum of the Option Fees paid by Participant or its assigns in the preceding year through September 25 each year.

1.11 "Payment Group" is the group of participants that have entered into Revised Plan B Project Participant Water Resources Agreements with the District and, through such Revised Plan B Project Participant Water Resources Agreements, have committed to the same Payment Schedule as Participant. A list of the participants within the Payment Group and their respective Plan B Project participation amounts is attached hereto as Exhibit D.

1.12 "Payment Schedule" is the amount of time over which Participant has elected in paragraph 2.6(d) of this Revised Agreement to exercise its option to obtain ERU Water Credits under this Revised Agreement.

1.13 "Plan B Project" is the combined water acquisition and supply project made up of the District's 777 acre-feet of consumptive use credit and the Denver Contract water the District will obtain pursuant to the FRICO Agreement, with participants making certain payments toward the Plan B Project in exchange for which the participants will receive ERU Water Credits as defined herein.

1.14 "Plan B Project Participation Amount" is the total number of ERU Water Credits and corresponding ERU Water Connections Participant has a right to receive under this Revised Agreement. Attached hereto is Schedule 1, which specifies Participant's Plan B Project Participation Amount and associated payment requirements and resulting ERU Water Credits to which Participant subscribed in the Original Agreement. Subsequent to the Original Agreement, Participant may have assigned a portion of its Plan B Project Participation Amount to others. Also attached to this Revised Agreement is Schedule 2, which specifies Participant's Plan B Project Participation Amount, as reduced by any such prior assignments and reflects Participant's payment requirements and resulting ERU Water Credits as of the date of this Revised Agreement based upon Participant's Plan B Project Participation Amount.

a) "FRICO Participation Amount" is the portion of Participant's Plan B Project Participation Amount available from the District that the District will obtain through its acquisition of 5,000 acre-feet of water under the FRICO Agreement.

(1) "Initial FRICO Participation Amount" is the ten percent (10%) portion of Participant's FRICO Participation Amount for which Participant made an initial

deposit and for which Participant has already received ERU Water Credits, which are recorded in the District's financial records.

(2) "Optioned FRICO Participation Amount" is the remaining ninety percent (90%) of Participant's FRICO Participation Amount, which is subject to Annual Installment Payments and Option Payments.

b) "SACWSD Participation Amount" is the portion of Participant's Plan B Project Participation Amount available from the District out of the District's 777 acre-feet of consumptive use credit.

1.15 "Reallocation of Participation Amounts" is the process of the District making the opportunity available to each non-defaulting participant to subscribe to additional increments of the Plan B Project whenever one or more participants do not confirm their commitment to make or do not make required payments as provided in their respective Revised Plan B Project Participant Water Resources Agreement, subject to the provisions of transfer described in paragraph 6.1. Wherever in this Revised Agreement there is referred to a "Reallocation of Participation Amounts" the following terms and procedures shall apply:

a) Upon an event requiring a Reallocation of Participation Amounts, the District shall provide notice to all non-defaulting participants that there is an opportunity to subscribe to additional increments of the Plan B Project and later receive ERU Water Credits after making payments in accordance with such subscription. (The additional increments of the Plan B Project to which a non-defaulting participant may subscribe shall hereinafter be referred to as "the Reallocated Participant Amount"). The notice shall specify (1) the date that a response must be filed with the District, (2) the total payment to be paid and the Payment Group to which the Reallocated Participant Amount belongs, (3) the date on which the payment shall be paid, (4) the ERU Water Credits a responding non-defaulting participant will acquire an option to receive upon making the payment, and (5) any subscription the District has elected to make. The District may also elect to subscribe to all or any portion of the Reallocated Participant Amount.

b) On or before the response date, each non-defaulting participant may submit a response to the District indicating its commitment to subscribe to any or all of the Reallocated Participant Amount and to assume the payments associated with that portion of the Reallocated Participant Amount under the terms described in the Revised Plan B Project Participant Water Resources Agreement under which the District originally granted the Reallocated Participant Amount, together with either a demonstration of the ability to use such reallocated water on lands depicted on Exhibit A or the District's approval of the non-defaulting participant's subscription to the Reallocated Participant Amount in its reasonable discretion. Submission of the response to the District shall constitute the agreement of the responding non-defaulting participant to make the payment described in the response for the entire Payment Schedule to which the Reallocated Participant Amount is subscribed (described in paragraph 2.6(d) of the Revised Plan B Project Participant Water Resources Agreement under which the District *originally* granted the option to the Reallocated Participant Amount) unless earlier

terminated in accordance with paragraph 2.6(b) of this Revised Agreement, regardless of the term of the Payment Group to which the responding non-defaulting participant subscribed in its Revised Plan B Project Participant Water Resources Agreement. In the event that the responses the District receives result in a total payment in excess of the payment in default, the payment by each responding non-defaulting participant shall be reduced by the following formula:

$$\text{Adjusted Payment} = P \times (TP/SP)$$

where

P = Payment responding non-defaulting participant proposed to pay in its response to the District

TP = Total Payment Associated with the Reallocated Participant Amount

SP = Total of proposed payment responses to the District

The District shall provide notice to each responding non-defaulting participant of (1) the acceptance of the response filed with the District or the Adjusted Payment determined pursuant to the foregoing formula, and (2) the number of ERU Water Credits to which the responding non-defaulting participant will have an option to receive upon timely payment of amount specified in the response filed with the District or the Adjusted Payment. Upon timely payment of the amount specified in the response filed with the District or the Adjusted Payment, the District shall designate in the financial records of the District the total ERU Water Credits that will be, upon payment, attributable to each responding non-defaulting participant as a result of the reallocation, which shall be equally divided between ERU Potable Water Credits and ERU Irrigation Water Credits.

c) A non-defaulting participant's response committing to subscribe to a portion of the Reallocated Participant Amount shall be a binding commitment to the District. The portion of the Reallocated Participant Amount to which the non-defaulting Participant subscribes shall be merged into the responding non-defaulting participant's obligation under its Revised Plan B Project Participant Water Resources Agreement, except that the Payment Schedule described in paragraph 2.6(d) of the Revised Plan B Project Participant Water Resources Agreement under which the District *originally* granted the option to the Reallocated Participant Amount will remain unchanged, and the District shall issue that participant a revised Schedule 2, showing its Participation Amount and resulting payments with the inclusion of its subscription to the Reallocated Participant Amount. Any default or failure to pay or make required commitments with regard to the Reallocated Participant Amount shall be considered a default or failure to make required commitments with regard to the responding non-defaulting participant's entire Plan B Project Participation Amount, and its entire Plan B Project Participation Amount will be subject to the provisions of paragraph 2.8 of this Revised Agreement.

d) In the event that the total of the payments proposed to be paid by the responding non-defaulting participants is less than the total payment associated with the

Reallocated Participant Amount, the District shall provide a second notice to each of the responding non-defaulting participants notifying them of the available Reallocated Participant Amount, and shall give those responding non-defaulting participants a period of three (3) business days from the date of such second notice to provide an amended response agreeing to subscribe to additional portions of the Reallocated Participant Amount and pay the Payment associated therewith. If, after such second notice, the responses the District receives result in a total payment in excess of the payment in default, the payment by each responding non-defaulting participant shall be reduced by the formula set forth in Section 1.15(b) above. In the event that the total of the payments proposed to be paid by the responding non-defaulting participants submitting amended responses to the District is still less than the total payment associated with the Reallocated Participant Amount, the District shall use reasonable efforts to subscribe to the remaining Reallocated Participant Amount or offer the opportunity to subscribe to said remaining Reallocated Participant Amount to third parties.

e) If the District receives less money than required under all Revised Plan B Project Participant Water Resources Agreements, even after conducting a Reallocation of Participant Amounts in accordance with paragraph 1.15 of this Revised Agreement, and if the District, after making reasonable efforts, has been unable to subscribe to the Reallocated Participant Amount or to find third-party subscribers to the Reallocated Participant Amount, **the options to continue to participate in the Plan B Project water of all participants within the Payment Group to which the Reallocated Participant Amount is subscribed will terminate.**

1.16 "System Development Fee" is the fee the District collects from developers to pay for existing and planned water and wastewater systems to be used, in part, to serve said developer. As of the effective date of this Revised Agreement, the System Development Fee is \$1,991. The District anticipates future annual increases to the System Development Fee. At such times as the District adjusts its water resources fees for the District in general, the District shall also adjust the System Development Fee.

1.17 "Water Resources Fee" is the fee the District charges developers to provide the District with funds it needs to develop water supplies for new customers. As of the effective date of this Revised Agreement, the Water Resources Fee is \$1,071. The District anticipates future annual increases to the Water Resources Fee. At such times as the District adjusts its water resources fees for the District in general, the District shall also adjust the Water Resources Fee.

## ARTICLE 2 PROJECT PURCHASE

2.1 Deposit. On November 14, 2001, Participant deposited into escrow an amount equal to Fifty Thousand Dollars (\$50,000.00) ("Deposit"). Land Title Guarantee Company ("Land Title") has held the Deposit pursuant to the terms and conditions of the Escrow Instructions, attached as Exhibit E.

2.2 Initial Payment to Escrow. The Participant has paid into escrow an initial payment of ten percent (10%) ("the Initial Payment"), less the Fifty Thousand Dollar (\$50,000) deposit which was credited against the Initial Payment, of its Participation Amount at Twelve Thousand Dollars (\$12,000) per acre-foot (*Initial Payment, see Schedule 1*). The District has recorded in its financial records ERU Water Credits resulting from this Initial Payment and such credits are designated Participant's Initial FRICO Participation Amount.

2.3 DELETED.

2.4 District's Payments to FRICO. On April 12, 2002, the District withdrew money from the escrow and paid to FRICO the amount of Three Million, Five Hundred Thousand Dollars (\$3,500,000), leaving Two Million, Five Hundred Thousand Dollars (\$2,500,000) of principal in escrow. At that time the District recorded ERU Water Credits in an amount equal to Participant's Initial FRICO Participation Amount (*Initial Payment Allocation, see Schedule 1*), subject to the provisions of Article 4 hereof.

On December 7, 2006, the District withdrew from escrow and paid to FRICO the remaining principal in escrow of Two Million, Five Hundred Thousand Dollars (\$2,500,000).

2.5 Notification Concerning FRICO Agreement. The District gave notice to Participant of the FRICO Agreement on September 15, 2006, indicating that water court approval had been supplanted by the Delivery Agreement. Participant's opportunity to respond to the FRICO Agreement has expired and Participant is deemed to have waived any right to object to the implementation of the Plan B Project.

2.6 Participant Payments.

a) On or before October 27, 2006, Participant had the right to *elect* to pay off any portion of its Participation Amount with an up-front payment of Twelve Thousand Dollars (\$12,000) per acre-foot and thus reduce any future Option Payments by Thirteen Thousand, Three Hundred, Thirty-Three Dollars and Thirty-Three Cents (\$13,333.33) for every 188.5 ERU Water Credits received for such up-front payment, or, alternatively, to commit to the option payment schedule. Participant elected not to make an up-front payment toward any portion of its Plan B Project Participation Amount and has instead elected to commit to the Payment Schedule for its entire Plan B Project Participation Amount.

b) Having committed to the Payment Schedule, and even if Participant would subsequently choose to prepay the remaining balance of FRICO Installment Payments, Participant *will be liable for all future Option Payments* through the entire Payment Schedule or until all participants within the Payment Group terminate further participation in the Plan B Project.

c) The District, in its sole discretion, reserves the right to pay off the remaining Installment Payments and Option Payments associated with a Payment Group on behalf of Participant prior to receipt of such Installment or Option Payments from Participant and

to continue to collect the FRICO Installment Payments and Option Payments from Participant under the original Payment Schedule determined in paragraph 2.6(d) of this Revised Agreement.

(1) If the District makes such election, it shall provide notice of such election to all participants within the Payment Group, and any participant within that Payment Group may choose to make all remaining FRICO Installment Payments for its FRICO Participation Amount and terminate its obligation to make further Option Payments to the District. Participant shall notify the District of its intent to do so within fifteen (15) days of receipt of the District's notice and shall remit all final payments within fifteen (15) days thereafter.

(2) The District shall retain all SACWSD Installment Payments, and shall be free to use those funds in its sole discretion for capital facilities development.

d) Participant has committed to the Payment Schedule over 6 years, as have other participants of the Plan B Project (*the Payment Group, see Exhibit D*). Participant therefore made its first Option Payment in the amount of \$138,709.11 on December 7, 2006, less any applied credit for interest accrued on the initial payment to escrow described in paragraph 2.2 of this Revised Agreement. It shall make subsequent annual payments to the District on or before each November 27 consisting of the following three parts:

- (1) an amount equal to \$12,000 per acre-foot for at least one-sixth (16.67%) of Participant's Optioned FRICO Participation Amount (*Participant's FRICO Installment Payment, see Schedule 2*); and
- (2) one-sixth (16.67%) of Participant's SACWSD Participation Amount (*Participant's SACWSD Installment Payment, see Schedule 2*); and
- (3) Participant's Option Payment (*Participant's Option Payment, see Schedule 2*).

Any additional option to participate in the Plan B Project that Participant may obtain from other Plan B Project Participants shall be subject to the Payment Schedule defined in the Revised Plan B Project Participant Water Resources Agreement initially granting such option.

e) If the total payment that the District anticipates receiving after all participants have had an opportunity to respond and confirm their commitment to timely make their Installment and Option payments is less than that required under all Revised Plan B Project Participant Water Resources Agreements, the District will conduct a Reallocation of Participant Amounts in accordance with paragraph 1.15 of this Revised Agreement.

f) DELETED.

g) DELETED.

2.7 Annual Payment Procedure. On or before October 1, 2007, and continuing on or before October 1 of each year during the Payment Schedule, the District shall send a written notice to Participant requesting that it confirm to the District its commitment to timely pay its Option Payment, FRICO Installment Payment and SACWSD Installment Payment, if such payment is applicable, (*see Schedule 2*), which are due on November 27 of that year. The notice shall inform Participant regarding any accrued Option Fee Credits or credits toward Participant's SACWSD Installment Payment or Participant's FRICO Installment Payment, as such credits are described in paragraph 1.7 of this Revised Agreement. Participant shall respond to the notice either affirming its commitment or terminating its interest in the Plan B Project on or before October 15 of each year. If Participant fails to respond, the District shall provide a second notice giving Participant ten (10) days from the date of such second notice in which to provide a response confirming its commitment to timely make the payments required under this Revised Agreement. If the District has not received a response from Participant within such ten (10) day period, or if at any time Participant responds with its intent to terminate its participation in the Plan B Project, the District shall initiate a Reallocation of Participation Amounts described in Section 1.15 above with respect to Participant's entire Plan B Project Participant Amount toward which Participant has not yet made payments.

On or before each November 27, Participant shall make its FRICO Installment Payment, its SACWSD Installment Payment (if applicable), and its Option Payment (*see Schedule 2*).

Excess credits resulting from payments of Option Fees or from Option Payments, if any, shall carry over annually. To the extent there may exist at the conclusion of the Payment Schedule any excess payments toward the total of Participant's Option Payments as a result of either payment under Participant's Option Payment obligation or payments by Participant or its assigns for Option Fees, a right to refund of such excess will exist only in favor of Participant. Participant's assigns shall have no right to refund hereunder. Participant's right to any such refund shall extinguish two (2) years following the conclusion of the Payment Schedule to which Participant has subscribed in paragraph 2.6(d) of this Revised Agreement.

2.8 Payment Default. In the event Participant shall fail to make any payment specified in this Article 2, including the failure to make the FRICO Installment Payment or SACWSD Installment Payment described in paragraph 2.6(d) of this Revised Agreement, even if Participant paid some portion of its FRICO Installment Payment or SACWSD Installment Payment under the provisions of paragraph 2.7 of this Revised Agreement or otherwise, Participant's option to make payments and receive ERU Water Credits under the Plan B Project shall terminate. The District shall reallocate Participant's option to continue participation in the Plan B Project to the non-defaulting participants using the procedure described in paragraph 1.15 of this Revised Agreement. Participant shall retain any ERU Water Credits the District allocated to it as a result of making previous FRICO and SACWSD Installment Payments, together with the rights to acquire ERU Water Connection Permits relating to such portion, provided that Participant complies with the provisions of this Revised Agreement relating to such portions of its Plan B Project Participation Amount which have been paid for. If a participant confirms its



commitment to timely make its Installment and Option Payments, but then fails to timely make such payments, the District will conduct a Reallocation of Participant Amounts in accordance with paragraph 1.15 of this Revised Agreement.

As described in paragraph 1.15(e) of this Revised Agreement, if the District receives less money than required under all Revised Plan B Project Participant Water Resources Agreements, even after conducting a Reallocation of Participant Amounts in accordance with paragraph 1.15 of this Revised Agreement, and if the District, after making reasonable efforts, has been unable to subscribe to the Reallocated Participant Amount or to find third-party subscribers to the Reallocated Participant Amount, **the options to continue to participate in the Plan B Project water of all participants within the Payment Group to which the Reallocated Participant Amount is subscribed will terminate.**

### ARTICLE 3 ERU WATER CONNECTIONS

3.1 The District will record ERU Potable Water Credits and ERU Irrigation Water Credits in favor of Participant in accordance with the terms and conditions of this Revised Agreement, subject to the limitations of Article 4. Such ERU Water Credits will apply to the ERU Water Connection Fee, provided that:

- a) Participant has provided the funds as described in this Revised Agreement for the purchase of Participant's Plan B Project Participation Amount; and
- b) Participant, or its successors or assigns, has provided dual distribution potable and irrigation water systems for the lands within the District depicted on Exhibit A.

3.2 Issuance of ERU Water Connection Permits. The District shall issue ERU Water Connection Permits upon application by Participant, or its successors and assigns, to develop lands within the District depicted on Exhibit A to be served pursuant to this Revised Agreement upon:

- a) Presentation of building permits for any structures that are to be the subject of the ERU Water Connection; and
- b) Surrender of an appropriate number of ERU Potable Water Credits or ERU Irrigation Water Credits to provide potable and/or irrigation supplies for the building or site. Participant or its successor or assign shall inform the District whether such surrendered credits were recorded in the District's financial records as a result of Participant's SACWSD Installment Payments, FRICO Installment Payments, or Participant's Initial FRICO Participation Amount. Participant shall not be required to surrender ERU Potable Water Credits for irrigation demands.

Where Participant or its successor or assign has exhausted its ERU Water Credits and is therefore unable to surrender such credits in exchange for an ERU Water Connection Permit, the District will alternatively accept the Incremental Water Payment; and

c) For ERU Water Connection Permits acquired out of Participant's Optioned FRICO Participation amount, surrender of an appropriate number of Option Fee Credits.

The intent of paying the FRICO Option Fee at the time of obtaining ERU Water Connection Permits is to reduce the risk to other participants within the Payment Group of termination of their future options under the Plan B Project. The District shall apply any funds paid under the Option Payments and Option Fees to maintain the future options of each Payment Group.

Where Participant or its successor or assign has exhausted its Option Fee Credits and is therefore unable to surrender such credits in exchange for an ERU Water Connection Permit, the District will alternatively accept payment for the Option Fee, described in paragraph 1.8 of this Revised Agreement; and

d) Construction in accordance with paragraphs 3.6, 3.7 and 3.8 below of a dual water distribution system to serve the land that is to be the subject of the ERU Water Connection; and

e) Payment of the then-current System Development Charge and other related fees; and

f) If applicable, payment for the BFI Rebate Fee; and

g) Payment of wastewater connection fees required by the District's Rules and Regulations; and

h) Compliance with all other provisions of this Agreement and the District's Rules and Regulations; and

i) Payment for the then-current Water Resources Fee.

Prior to issuing any ERU Water Connection Permits under the final twenty percent (20%) of the Participant's Optioned FRICO Participation Amount, the District will require payment for the present value, calculated using an annual interest rate of 3.5 percent, of Participant's Option Payments for the remainder of its Payment Schedule period and required under paragraph 2.6(d)(3) of this Revised Agreement. Upon Participant's payment for the present value of such remaining Annual Option Payments, the District shall allocate in its financial records Option Fee Credits. In lieu of Participant's payment for the present value of Participant's remaining Option Payments, the District may in its sole discretion accept other reasonable financial assurances of future payment for the remaining Option Payments.

3.3 Determination of ERUs; Exchange of Lands. The number and type of ERU Water Credits and System Development Charges required for different types of development (e.g., multi-family, parks, etc.) shall be determined according to the then-current District Rules and Regulations. As to the ERU Water Credits available under this Revised Agreement, the District will consider an exchange of new land(s) for a portion of those lands depicted on Exhibit A, so long as the new lands are capable of being served by the District's dual distribution system, described in paragraph 3.6 of this Revised Agreement. The District's approval of such exchange shall not be unreasonably withheld, with any exchange being subject to reasonable terms and conditions determined by the District. Such terms and conditions shall not include surrender of additional ERU Water Credits, or payment of additional compensation (other than a nominal administrative transfer fee), as consideration for such consent.

3.4 Fees. Prior to obtaining an ERU Water Connection Permit, all then-applicable fees must be paid, including, but not limited to, the Water Resources Fee; the System Development Fee; and the Option Fee, where the Option Fee is applicable. The District, in its reasonable discretion, may adopt new fees or increase established fees for the District in general, and such new fees or increased established fees will apply to this Revised Agreement. The District will publish a schedule of applicable fees annually and will provide such schedule to Participant with its annual October 1 notice requesting commitment to make Participant's annual payments.

3.5 Participant acknowledges that this Revised Agreement may not provide water resources to meet all of the water supply needs of the properties depicted on Exhibit A, and that Participant may be obligated to enter into future water resources agreement(s) to meet any additional water supply demands over and above the ERU Potable and Irrigation Water Connections Participant might obtain under this Revised Agreement.

3.6 Construction of Dual Distribution System. The Parties agree that with respect to development of property served by ERU Water Connection Permits purchased pursuant to this Revised Agreement, construction shall include a "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 systems. 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 through the Irrigation Water System in lieu of delivery of irrigation water.

3.7 In order to serve the participant lands depicted in Exhibit A, the District shall install, at its sole cost and expense, the main water delivery facilities for the Irrigation Water System in accordance with the Master Utilities Plan of the District, as such plan may be revised from time to time by the District. Provision of ERUs to participants is subject to construction of the main water delivery facilities for the Irrigation Water System in accordance with the Master

Utilities Plan of the District necessary to provide ERUs to the participants. While the District will use reasonable efforts to install such main water delivery facilities for the Irrigation Water System in accordance with its Master Utilities Plan, it cannot guarantee that such main water delivery facilities for the Irrigation Water System will be secured in accordance with a particular schedule of projected development.

3.8 Participant or its successors and assigns shall install, according to the District's then-current specifications, and at their respective sole cost and expense, all piping and facilities required for delivery of water from the main water delivery facilities for the Irrigation Water System installed by the District to each lot or parcel to be served by the water supply. As to extensions of the Potable Water System necessary to serve the participant lands, Participant or its successors and assigns shall be required to extend water mains and construct related facilities at their respective own cost, as set forth in the District's Rules and Regulations. Upon completion by Participant or its successors and assigns of construction of such dual water supply lines, the District shall make appropriate inspection and notation of its records to reflect such construction.

3.9 Facility Design Criteria. The then-current facility design criteria set forth in the District's Design Specifications and Standards, together with any applicable provisions of the District's Rules and Regulations, shall apply to all facilities constructed to supply potable and irrigation water supplies to the participant lands.

#### ARTICLE 4 WATER AND SANITATION SERVICES

4.1 General. The District shall provide water and sewer service to the participant lands depicted on Exhibit A in accordance with the then current District's Rules and Regulations and Design Standards and Specifications. All public water and sanitary services provided shall require Participant or its successors and assigns to construct the extension of potable main water lines and sewer lines and related facilities to serve their properties, all as set forth in the District's Rules. The issuance of any ERU Water or Sewer Connection Permits shall be subject to the payment of all fees and charges, as specified in this Revised Agreement, compliance with the District's Rules and Regulations, compliance with the District's Design Specifications and Standards, and the completion of needed wastewater plant expansion to provide the requested public sewer services.

4.2 Connection Contingency. The District's obligation to issue Participant or its successors and assigns ERU Water and Sewer Connection Permits is expressly contingent on expansion of the District's existing wastewater treatment plant, certain dead-end improvements, and completion of a regional wastewater plant so as to include capacity for the District. The District shall use reasonable efforts to complete these wastewater projects or complete alternative and additional projects.

4.3 Wastewater Capacity Constraints. Upon written request by Participant or its successors and assigns, the District shall provide a status report regarding the completion of the

foregoing projects. If the issuance of ERU Water and Sewer Connection Permits to Participant or its successors and assigns is constrained by a lack of available wastewater collection and treatment facilities, the Parties shall meet and in good faith try to negotiate an agreement under which pre-payment of sewer connection fees may alleviate, in whole or in part, any constraints on issuance of sewer permits. In the event the wastewater plant expansions described herein are not successfully completed within the time-frames described above, the ERU Water Credits shall remain in full force and effect and may be used at such time when the conditions are satisfied or the District is otherwise able to provide service.

4.4 Connection Thresholds. The District will afford the opportunity to all participants to purchase ERU Water Connection Permits on an as-needed basis each year, unless total demand for new connections by all users in the District has exceeded either of the following thresholds:

a) Utilization of new ERU Water Connection Permits within the District has exceeded an average of 1,800 per year between January 1, 2002 and the date on which the anticipated regional wastewater treatment plant becomes operational, or

b) Utilization of new ERU Water Connection Permits in the District in any one year exceeded or will exceed 2,266.

4.5 Connection Allocation. If total demand for ERU Water Connection Permits has exceeded these thresholds, the District will allocate ERU Water Connection Permits to all participants in annual increments. If the total demand for ERU Water Connection Permits has or will exceed threshold a), then the District will allocate to each participant 3.98% of the participant's entire Plan B Project Participation Amount, not to exceed the portion of the participant's Plan B Project Participation Amount paid for up to that time. In the case of excess of threshold b), the number will be 5.0% of the participant's entire Plan B Project Participation Amount, not to exceed the portion of the participant's Plan B Project Participation Amount paid for up to that point in time. (*See Connection Allocations, Schedule 2*).

4.6 Procedure for Allocations Subject to Rules and Regulations. Specific provisions for implementing these allocations will be developed, if necessary, and included in the District's Rules and Regulations.

4.7 Provisions of Service Subject to Available Water and Wastewater Capacity. Additional water supplies and wastewater treatment capacity necessary to serve participant lands will be pursued by the District. Provision of ERU Water Connection Permits to participants is subject to construction of public water and wastewater facilities necessary to provide ERU Water Connection Permits to the participants. While the District will use reasonable efforts, it cannot guarantee that such water supplies or wastewater treatment capacity will be secured in accordance with a particular schedule of projected development. The District allocates portions of system development fees, wastewater resource fees and similar purpose fees to the acquisition of water supplies, water facilities and wastewater treatment capacity and the District agrees and

commits to continue its policy of using such fees for the acquisition of water supplies, water facilities and wastewater facilities for overall improvements to the District's water and wastewater system which will assist with the provision of service to the participants.

4.8 Reallocation of Annual ERU Allocations. If in any given year any Participant has not purchased the ERU Water Connection Permits allocated to it in accordance with a Connection Allocation under paragraph 4.5 of this Revised Agreement, the District will offer the unused ERU Water Connection Permits available under such Connection Allocation to other Plan B Project Participants.

4.9 No Effect on GID Allocations. The ERU Water and Sewer Connection Permit allocations set forth herein shall not modify or limit Participant's ability to receive ERU Water Connection Permits allocated by the District for those lands originally included within the Northern Infrastructure General Improvement District (see paragraph 6 of the Agreement between the District and the GID dated April 27, 1998); neither Participant, nor any other land owners within the GID, are considered to be beneficiaries, third party or otherwise, of such agreement.

4.10 Agreement to Negotiate. The parties agree to negotiate in good faith as to water and sewer connection permit allocation issues that arise.

## ARTICLE 5 DELETED

5.1 DELETED.

5.2 DELETED.

5.3 DELETED.

## ARTICLE 6 MISCELLANEOUS

6.1 Transfer of Participation Amounts. The District has entered into agreements with other persons and entities for participation in the Plan B Project. Participant may transfer all or any portion of Participant's right to participate in the Plan B Project and receive ERU Water Credits and to purchase corresponding ERU Water Connection Permits under this Revised Agreement to other persons and entities with whom the District has entered into Revised Plan B Project Participant Water Resources Agreements, upon consent of the District, which consent shall not be unreasonably withheld. Such transfers to other participants or participants' related entities of options to participate in the Plan B Project and receive ERU Water Connection Permits and ERU Water Credits shall not be subject to the additional conditions of this paragraph 6.1. Participant or its related entities may also acquire all or a portion of agreements from other persons and entities for participation in the Plan B Project, upon consent of the District, which

consent shall not be unreasonably withheld and upon such acquisition shall not be subject to the additional conditions of this paragraph 6.1. Nor will a transfer of any of Participant's Initial Participation Amount be subject to the additional conditions described below.

Participant may transfer any contractual interest it holds under this Revised Agreement to a subsequent purchaser of Participant's property depicted on Exhibit A, or a corporate or business entity successor for use on that property subject to the conditions described below.

If and only if no other participant or participant's related entity is interested in acquiring any portion of Participant's Plan B Project Participation Amount, Participant is also entitled to transfer such interest to other persons and entities that own land within the District, upon consent of the District and on certain conditions described below. However, Participant is entitled to transfer any contractual interest it holds under this Revised Agreement to a subsequent purchaser of Participant's property depicted on Exhibit A notwithstanding another Plan B Project participant's or its related entity's interest in acquiring the same interest.

The District will not recognize any transfer by Participant of all or a portion of Participant's contractual interest under this Revised Agreement unless and until the District has reviewed and consented to such transfer. The District will not review any transfer without receipt of payment for the then-current transfer fee.

a) If the proposed transfer entails a right to obtain 50 ERU Water Connection Permits or fewer, the Participant may only transfer such right to obtain ERU Water Connection Permits for which it has already made the associated Installment Payments and has therefore been allocated in the District's financial records ERU Water Credits and is entitled to the issuance of ERU Water Connection Permits upon compliance with the requirements listed in Paragraph 3.2 of this Revised Agreement. The District may approve such transfer only upon receipt of payment for all FRICO Option Fees associated with the transferred rights. In lieu of payment for all FRICO Option Fees associated with the transferred rights, the District may, in its sole discretion, accept other reasonable financial assurances of future payment for those FRICO Option Fees.

b) If the Participant proposes to transfer the right to purchase more than 50 ERU Water Connection Permits, the District may approve such transfer only upon the District's reasonable determination that the proposed transferee is financially solvent such that the transfer to the transferee will not unreasonably jeopardize the District's ability to continue to obtain Plan B Project water for the remaining participants within the Payment Group to which the transferred Participation Amount belongs. Additionally, the District may impose reasonable terms and conditions on the transfer, including, but not limited to, reasonable financial assurances of the transferee's ability to make future payments under this Revised Agreement.

c) The District's approval of any transfer of a portion of Participant's contractual interest under this Revised Agreement shall not modify Participant's obligation to make annual Installment and Option Payments as required in paragraph 2.6(c) hereof, except as

described below. Participant shall continue to make annual Installment and Option Payments as contained in Schedule 2, subject to any credit Participant may receive for payments made by Participant or by Participant's assigns under this Revised Agreement. The District shall provide ERU Water Connection Permits to Participant's approved assigns in accordance with the District's obligation under this Revised Agreement to provide ERU Water Connection Permits to Participant. Participant's approved assigns shall not, however, succeed to any of Participant's contractual interest under this Revised Agreement, nor shall Participant's assigns become participants of the Plan B Project, except as provided in subsections (c)(1) and (c)(2), below. Participant's assigns shall have no rights from or obligations directly to the District; Participant's assigns shall have rights and obligations pursuant only to their agreements with Participant.

(1) Where Participant transfers any portion of its contractual interest in the Plan B Project to another participant or a participant's related entity, however, Participant shall no longer be obligated to make annual Installment and Option Payments associated with the transferred interest, so long as the participant-assignee assumes such obligation in the transfer document. Where the participant-assignee assumes such obligation, the District shall issue Participant and the participant-assignee each a revised Schedule 2 reflecting the transfer and resulting new payment obligations.

(A) The participant-assignee's assumption of the obligation to make annual Installment and Option Payments associated with the transferred interest shall be in accordance with Participant's payment obligation, including, but not limited to, the Payment Schedule described in paragraph 2.6(d) of this Revised Agreement.

(B) The participant-assignee's assumption of the obligation to make annual Installment and Option Payments associated with the transferred interest shall merge the transferred interest into the participant-assignee's obligation under its Revised Plan B Project Participant Water Resources Agreement, except that the Payment Schedule described in paragraph 2.6(d) of the Revised Plan B Project Participant Water Resources Agreement under which the District originally granted rights to the transferred participation amount will remain unchanged, and therefore participant-assignee's failure to make an annual Installment Payment or Option Payment associated with the transferred amount shall constitute a payment default under paragraph 2.8 of its Revised Plan B Project Participant Water Resources Agreement.

(2) Where Participant transfers its entire contractual interest under this Revised Agreement, the transferee shall become a participant of the Plan B Project. Participant's transferee shall succeed to this Revised Agreement in its entirety, with no modifications, and shall obtain rights directly from and have obligations directly to the District, subject to the District's ability to impose reasonable terms as described in subparagraph (b), above.

6.2 Executory Interest. Participant's rights under this Revised Agreement are contract rights and depend on and are contingent upon the complete and full performance by Participant of all of its obligations hereunder. Notwithstanding anything herein to the contrary, the District



may re-allocate Participant's rights hereunder if there is an event requiring a Reallocation of Participation Amounts as described hereunder.

6.3 Commitment to Re-negotiate with FRICO. The Parties hereby confirm their intent to attempt to work on the potential renegotiation of the District's acquisition of this water supply from FRICO. The District will appoint a representative to lead a committee of participants of the Plan B Project to draft a proposal to FRICO, Burlington, and Henrylyn to amend some of the terms regarding the District's acquisition of Plan B Project water resources. The District shall establish such committee no later than May 15, 2007. The committee shall prepare such proposal for presentation to FRICO, Burlington, and Henrylyn no later than August 1, 2007. The Parties affirm that this Revised Agreement is controlling absent any modifications in accordance with paragraph 6.9 of this Revised Agreement.

6.4 Encumbrances. Where Participant voluntarily pledges its contract interests in this Revised Agreement as security for a loan, it shall notify the District of such pledge and encumbrance. The notice shall issue jointly from Participant and the lender holding the encumbered interest and shall confirm that the lender, its successors and assigns, will further promptly notify the District of any alleged default by Participant on its obligation to such lender.

a) Upon receipt of any such notice of default or event of default, the District will discontinue issuance of ERU Water Connection Permits to Participant or its successors, assigns, and transferees (including lender and its designee) until it receives further notice from such lender or a court of competent jurisdiction that Participant's obligation is no longer in default and any performance and monetary defaults of Participant or any successor under this Revised Agreement have been satisfied in full.

b) Any voluntary or involuntary transfer to a lender or any third party as a result of a default under such loan secured by an interest in this Revised Agreement shall be subject to the consent of the District, which consent shall not be unreasonably withheld.

c) A lender's notice to the District of Participant's alleged default or event of default shall not modify Participant's obligation to make annual payments under paragraph 2.6(d) of this Revised Agreement or the District's ability to conduct a Reallocation of Participant Amounts under paragraph 1.15 of this Revised Agreement in the event of a Payment Default as described in paragraph 2.8 of this Revised Agreement.

6.5 Notices. Whenever any notice, demand, or request is required or provided for under this Revised Agreement, such notice, demand, or request shall be provided in writing to the following addresses or such other addresses as may be designated by a party by notice. Notice shall be deemed received when personally delivered, or three days after having been deposited in a U. S. Postal Service depository to be sent by registered or certified mail, return receipt requested, with all required postage prepaid, or one business day after having been sent by overnight courier. Notice may be concurrently sent via email, but will not be deemed received

until personally delivered or three days after having been deposited in a U.S. Postal Service depository:

To Participant: Craig Ranch Golf Course, LLC  
Attn: Donald E. Nelson, Manager  
P.O. 62467  
Boulder City, Nevada 89006-2467  
Email: [slampman3@cox.net](mailto:slampman3@cox.net); [hashold@aol.com](mailto:hashold@aol.com)

Copy to: Stanley Parry  
Ballard, Spahr, Andrews & Ingersoll, LLP  
300 South Fourth Street, Suite 1201  
Las Vegas, Nevada 89101  
Email: [parrvs@ballardspahr.com](mailto:parrvs@ballardspahr.com)

To the District: General Manager  
South Adams County Water and Sanitation District  
6595 East 70th Avenue  
Commerce City, Colorado 80037-0597  
Email: [PlanBProject@sacwsd.org](mailto:PlanBProject@sacwsd.org)

Copy to: Timothy J. Beaton, Esq.  
Moses, Wittemyer, Harrison and Woodruff, P.C.  
P.O. Box 1440  
1002 Walnut, Suite 300  
Boulder, Colorado 80306  
Email: [tbeaton@mwhw.com](mailto:tbeaton@mwhw.com)

Participant shall promptly notify the District at the above-listed addresses of any changes to the address to which the District may send any notices pertaining to Participant's interest under this Revised Agreement.

6.6 Time is of the Essence. Time is of the essence with respect to each and every aspect of this Revised Agreement, and strict compliance with all time requirements is at the heart of this Revised Agreement and shall be strictly enforced.

6.7 Authority. The individuals executing this Revised Agreement on behalf of their respective entities are authorized by the entities to execute this Revised Agreement on behalf of their respective entities.

6.8 Default. The failure of a party to this Revised Agreement after closing to perform or observe of any of the covenants, terms, or conditions of this Revised Agreement other than Participant's obligation to annually notify the District of its commitment to timely make requirement payments or Participant's obligation to make Annual Installment or Option

Payments shall, after reasonable notice and the opportunity to cure, be an event of default. It is expressly understood and agreed that the failure of Participant to make an Option Payment or Annual Installment Payment described herein shall not be considered an event of default with respect to this paragraph 6.8, provided, however, that following the failure to make an Option Payment or Installment Payment required under paragraph 2.7 of this Revised Agreement, Participant will not retain any future rights to exercise the option to participate in the Plan B Project pursuant to paragraph 2.8 of this Revised Agreement.

a) Any default resulting in a threat to public health, safety, or welfare shall be cured immediately by the defaulting party. As to any other default, a party who claims that another party has failed to perform as required by this Revised Agreement shall provide written notice to the other party setting forth the specific failure complained of and shall provide that party a minimum of thirty (30) days within which to cure or within which to agree with the complaining party on a plan to cure the default, except that where an emergency circumstance exists which requires injunctive or other immediate relief, a party may commence a suit prior to the running of the cure period. If the defaulting party does not cure within the time allowed, it shall be deemed to constitute an Event of Default.

b) Upon the occurrence of an Event of Default, the non-defaulting party will have the right to enforce its rights under this Revised Agreement and any applicable law by such suit, action, or special proceedings as the party deems appropriate including, without limitation, specific performance of any covenant in this Revised Agreement. If the District is the non-defaulting party, it may suspend the defaulting Participant's right to obtain further ERU Water Connection Permits until satisfactory cure of the Event of Default. Except as otherwise provided for herein, all rights and remedies of the Parties may be exercised with or without notice, shall be cumulative, may be exercised separately, concurrently, or repeatedly, and the exercise of any such right or remedy shall not affect or impair the exercise of any other rights or remedy.

c) The failure of a party to insist, on one or more occasions, upon the strict observation of any of the terms of this Revised Agreement shall not be construed as a waiver or relinquishment in any future occasion of any of the terms of this Revised Agreement.

6.9 Entire Agreement; Modifications. The making, execution and delivery of this Revised Agreement by the parties has been induced by no representations, statements, warranties or agreements other than those expressed in this Revised Agreement. This Revised Agreement embodies the entire understanding of the parties as to the subject matter hereof and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to its subject matter unless expressly referred to in this Revised Agreement. Modification of this Revised Agreement by the parties may be made only by a writing signed by the party or parties to be bound by the modification.

6.10 Recording. This Revised Agreement shall be recorded at the office of the Adams County Clerk and Recorder at or following the Closing.

person or entity other than the parties, any right, remedy or claim under or by reason of this Revised Agreement or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in the Agreement contained by and on behalf of the parties shall be for the sole and exclusive benefit of the parties.

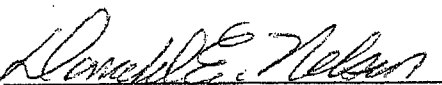
6.19 Effective Date of Agreement. This Revised Agreement shall be effective on the last date it is signed by the Parties.

**PARTICIPANT,**  
CRAIG RANCH GOLF COURSE, LLC,  
a Nevada limited liability company

By:   
Donald E. Nelson, Manager

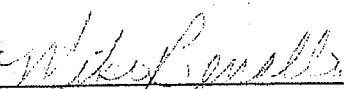
Date: 11-21-07

LAS VEGAS GAMING INVESTMENTS, LLC,  
a Nevada limited liability company

By:   
Donald E. Nelson, Manager

Date: 11-21-07

**SOUTH ADAMS COUNTY WATER AND  
SANITATION DISTRICT**, a Colorado Special District  
by and through its WATER AND SEWER ENTERPRISE

By:   
Mike Benallo, President

Date: DEC 12, 2007

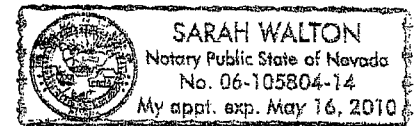
STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK    )

The foregoing instrument was acknowledged before me this 21<sup>ST</sup> day of November 2007 by Donald E. Nelson, Manager, Craig Ranch Golf Course, a Nevada limited liability company.

WITNESS my hand and official seal.

My commission expires: May 16, 2010

Sarah A. Walton  
Notary Public



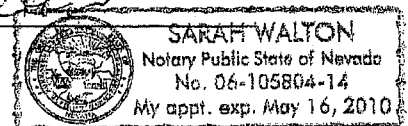
STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK    )

The foregoing instrument was acknowledged before me this 21<sup>ST</sup> day of November 2007 by Donald E. Nelson, Manager, Las Vegas Gaming Investments, a Nevada limited liability company.

WITNESS my hand and official seal.

My commission expires: May 16, 2010

Sarah A. Walton  
Notary Public



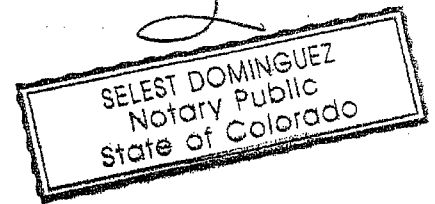
STATE OF COLORADO     )  
                                      )ss.  
COUNTY OF ADAMS     )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of December 2007, by Mike Benallo as President of South Adams County Water and Sanitation District, a Colorado special district, acting by and through its Water and Sewer Enterprise.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_ My Commission Expires 01/31/2011

S. Dominguez  
Notary Public



SCHEDULE 2  
CRAIG RANCH

Total Plan B Project Participation Amount out of 5,777 acre-feet (sum of Participant's Initial FRICO, SACWSD, and Optioned FRICO amounts)	
acre-feet	591.51
ERUs	2,230
Optioned FRICO Participation Amount out of 4,500 acre-feet	
acre-feet	520.16
ERUs	1,961
Initial FRICO Participation Amount out of 500 acre-feet	
acre-feet	0.00
ERUs	0.00
SACWSD Participation Amount out of 777 acre-feet	
acre-feet	71.35
ERUs	269
Remaining SACWSD ERUs (after obtaining any connection permits)	269
Credit for interest earned on initial payment to escrow	\$0
Term of Option Right (years)*	6
Annual Option Payment 2006 (subsequent payments will increase by 3.5% annually)	\$138,709.11
Annual FRICO Installment Payment	\$1,040,318.30
Minimum Annual FRICO Purchase Amount	
acre-feet	86.69
ERUs	326.83
Annual SACWSD Installment Payment 2007 (subsequent payments will increase by 3.5% annually)	\$142,705.57
Minimum Annual SACWSD Purchase Amount	
acre-feet	11.89
ERUs	44.83
Connection allocation threshold a (ERUs)	88.77
Connection allocation threshold b (ERUs)	111.50

\* Pursuant to paragraph 2.7 of the Revised Plan B Project Participant Water Resources Agreement ("Revised Agreement"), if Participant has made Option Payments or Option Fees in excess of those described in this Schedule 2, it has a right to refund of any such excess. Such right of refund extinguishes two (2) years following the conclusion of the Payment Schedule to which Participant has subscribed. The District shall notify Participant in accordance with paragraph 6.5 of the Revised Agreement no later than sixty (60) days prior to extinguishing any such right of refund.

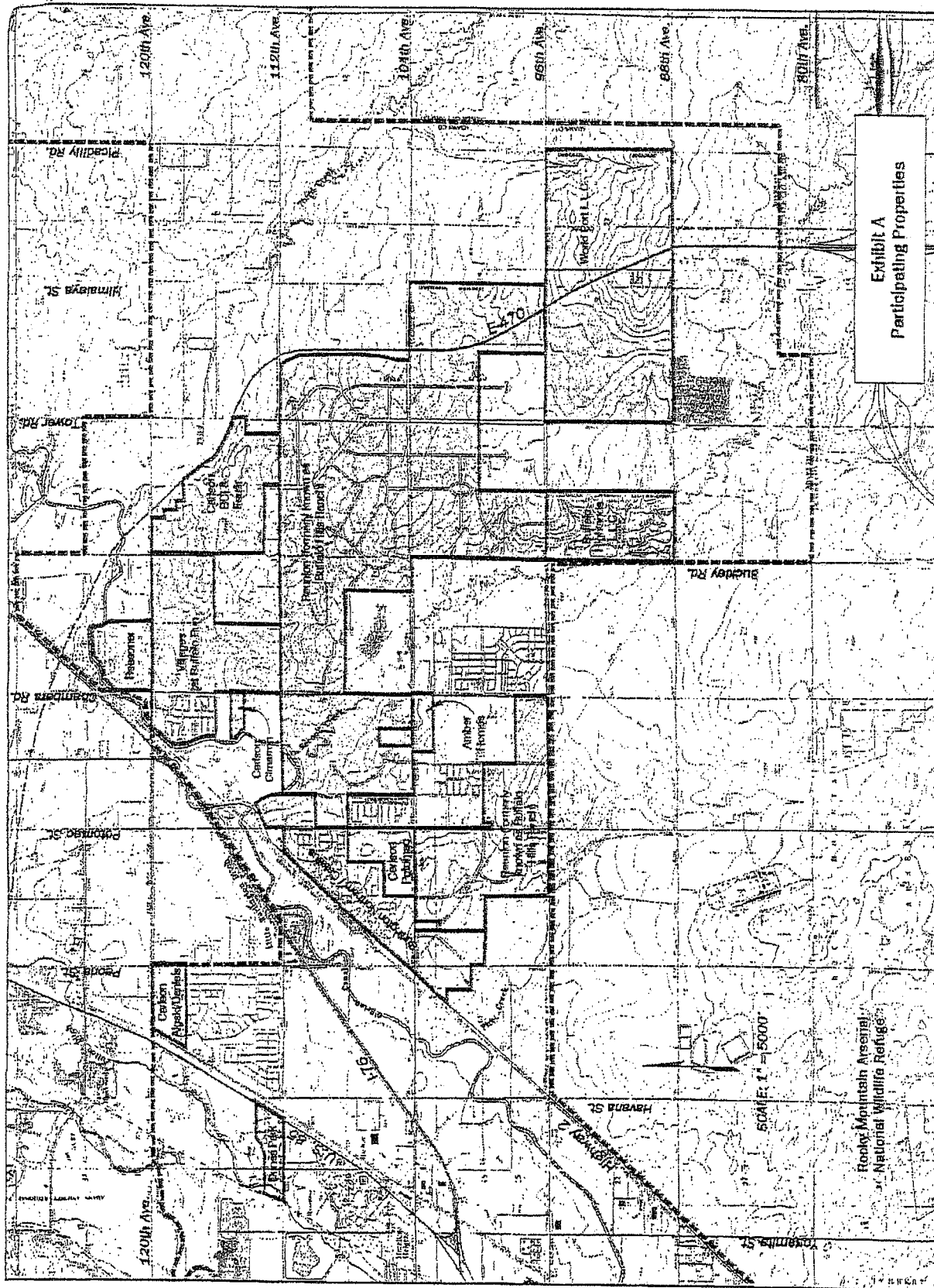




Exhibit B

AMENDED STOCK PURCHASE AGREEMENT

This Amended Stock Purchase Agreement is entered into this 6<sup>th</sup> day of September 2006, between SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT, a Colorado special district, also acting in an enterprise capacity pursuant to its WATER AND SEWER ENTERPRISE (collectively referred to as the "DISTRICT") and THE FARMER'S RESERVOIR AND IRRIGATION COMPANY, a Colorado mutual ditch company ("FRICO"); THE BURLINGTON DITCH RESERVOIR AND LAND COMPANY, a Colorado mutual ditch company ("BURLINGTON"); and THE HENRYLYN IRRIGATION DISTRICT, a statutory irrigation district ("HENRYLYN"), collectively referred to as the "COMPANIES" is as follows:

WHEREAS, the DISTRICT and the COMPANIES entered into a Stock Purchase Agreement on the 5th day of December, 2001 (the "Initial Agreement"); and

WHEREAS, changed circumstances necessitate that the initial Agreement be amended; and

WHEREAS, the COMPANIES have certain contract rights to water, that may provide a municipal water supply for the DISTRICT; and

WHEREAS, the DISTRICT has a present need for water for municipal uses both to meet present demands and to provide for the reasonable future needs of the businesses and inhabitants within the DISTRICT's service area as the same may exist from time to time; and

WHEREAS, the DISTRICT and the COMPANIES desire to enter into an agreement to amend the initial Agreement ("the Amended Agreement") that provides for the allocation of certain contract rights to water for the benefit of the DISTRICT as a shareholder of FRICO to meet the reasonable future needs of the DISTRICT as a shareholder of FRICO; and

WHEREAS, FRICO, BURLINGTON and HENRYLYN have previously entered into various agreements through which the COMPANIES have provided for the allocation of water rights and use of facilities to provide water to the shareholders and landowners entitled to the delivery of water by the COMPANIES; and

WHEREAS, the DISTRICT and the COMPANIES desire to provide for the allocation of certain contract rights and facilities to shares of stock in a division of FRICO that will provide municipal use water to the DISTRICT; and

WHEREAS, the COMPANIES entered into an Agreement dated August 31, 1999 ("DENVER CONTRACT") with the CITY AND COUNTY OF DENVER, acting by and through its Board of Water Commissioners ("Denver"), which was recorded in the books and records of the Clerk and Recorder of Adams County on \_\_\_\_\_, 2001 as Reception No. \_\_\_\_\_ and was recorded in the books and records of the Clerk and Recorder of Weld County on \_\_\_\_\_, 2001 in Book \_\_\_\_\_

\_\_\_\_\_ at Page \_\_\_\_\_; and

WHEREAS, the DENVER CONTRACT provided for an annual delivery of 5,000 acre feet of fully consumable water to FRICO ("Contract Water"); and

WHEREAS, subject to acceptable agreements between Denver, South Adams, and the Companies, the Denver Contract, in part, can provide a source of municipal water for direct delivery to the District as a shareholder of FRICO; and

WHEREAS, the District, the Companies, and Denver are working on terms and conditions that would allow for the direct delivery of the Contract Water to the District; and, if these terms and conditions can be agreed upon, Denver will enter into an agreement with the District for direct delivery of the Contract Water ("Delivery Agreement"); and

WHEREAS, the District and the Companies have agreed to terms and conditions for the direct delivery of the Contract Water to the DISTRICT.

NOW THEREFORE, the parties to this Amended Agreement agree as follows:

1. New Water Delivery Divisions. Within thirty (30) days after the execution of the initial Agreement and in compliance with the initial Agreement, FRICO and BURLINGTON, each in accord with the terms and provisions of their Articles of Incorporation respectively, at their annual stockholder meetings or special meetings of their shareholders called for such purpose, proposed amendments to the articles of incorporation of each company creating a separate division in each corporation for water delivery purposes and for the purpose of fulfilling the terms and conditions of the initial Agreement and this Amended Agreement. Each of the divisions shall be entitled "MUNICIPAL DIVISION," and shall be governed by and operated pursuant to the terms and conditions of this Agreement.

There shall be allocated to the FRICO Municipal Division a total of one hundred (100) shares of stock in FRICO. The shares of stock in the FRICO Municipal Division may be issued in fractional increments of a share, not less than 1/10th of one share, so long as the DISTRICT owns at least one full share. All assessments on stock allocated to the FRICO Municipal Division shall be assessed on the same basis as all other stock in FRICO.

The amendments and documents approved by the shareholders of FRICO and BURLINGTON are attached as Exhibits \_\_\_\_\_. In order to evidence the shareholder consent to assignment of the Initial Municipal Division Water, as hereinafter defined, and the Additional Contract Water, as hereinafter defined, to the Municipal Division and the sale of stock in the Municipal Division to the DISTRICT in accordance with the terms and conditions of the initial Agreement and this Amended Agreement, shareholders constituting not less than a majority of shares of FRICO outstanding approved a resolution in the form of the attached Exhibit \_\_\_\_\_ and shareholders constituting not

less than a majority of shares of BURLINGTON outstanding approved a resolution, in the form of the attached Exhibit \_\_\_\_\_.

At least 10 days prior to the meetings to approve the resolutions, FRICO and BURLINGTON mailed to the respective shareholders at the addresses specified in the books and records of each company, a copy of the initial Agreement and a Notice of Meeting in the form of the attached Exhibits \_\_\_. After the Closing on the Initial Municipal Division Water copies of the resolutions adopted by the shareholders of each company were delivered to the DISTRICT, and the initial Agreement was recorded at the office of the Adams County Clerk and Recorder and Weld County Clerk and Recorder. In addition, FRICO and BURLINGTON delivered to the DISTRICT an opinion of legal counsel for FRICO and BURLINGTON indicating that the actions of the shareholders and board of directors of each company required by the Initial Agreement were completed and are consistent with the Articles of Incorporation, Bylaws and Colorado law.

Henrylyn's interest in the initial Agreement and this Amended Agreement is pursuant to the following Agreements: Agreement between the Companies and Third Creek Corporation dated January 1991; Settlement Agreement between the Companies and Denver Water Board dated August 31, 1999; and Agreement between the Companies dated October 1999. The Board of Directors of Henrylyn is authorized to enter into the initial Agreement and this Amended Agreement pursuant to the provisions of Colorado Revised Statutes Sections 37-41-113(1), 37-41-113(7), 37-41-114, 37-41-115, and 37-41-116(1). Additionally, pursuant to paragraph 4. of the January 1991 Agreement, the initial Agreement was subject to majority approval of the Henrylyn landowners who vote on the planned exchange. Such approval was obtained at a regular or special election of Henrylyn held not more than seventy days after the effective date of the initial Agreement. At the initial closing under the initial Agreement, Henrylyn delivered to the District an opinion of legal counsel for Henrylyn that the actions of the Henrylyn Board of Directors and vote of the Henrylyn landowners required by this Agreement were completed and are consistent with Colorado law.

A. Contingent upon the DISTRICT purchasing ten (10) shares of stock in FRICO that are allocated for water delivery purposes to the FRICO Municipal Division as provided below, which the District did, FRICO allocated the Contract Water for delivery to the FRICO Municipal Division shares. FRICO was required to and did obtain the beneficial interest in the Contract Water from Burlington and Henrylyn at its sole cost and expense. FRICO shall allocate its share of the Contract Water together with the share of Contract Water that it has acquired from Burlington and Henrylyn for the purpose of providing a source of replacement water for the FRICO Municipal Division shares.

The allocation of the Contract Water, in proportion to a total allocation of five thousand acre feet (5,000 acre feet) of fully consumable municipal use water to the aggregate number of one hundred (100) FRICO Municipal Division shares, shall

become irrevocable upon the purchase of each Municipal Division share by the District under the terms provided in this Amended Agreement.

During the term of this Amended Agreement, FRICO shall have the sole and exclusive right to purchase the beneficial interest in the Contract Water from Burlington and Henrylyn upon terms and provisions previously agreed to among the Companies. During the pendency of this Amended Agreement, the Contract Water available to the Companies shall be held solely for the purpose of providing water for delivery to the FRICO Municipal Division shares, and following the purchase of the Municipal Division shares by the District, such Contract Water to the full extent necessary to provide for water for delivery to the FRICO Municipal Division shares shall be irrevocably held by the Companies for the purpose of providing water to the Municipal Division shares owned by the District.

B. Each share of the FRICO Municipal Division shall be entitled to the delivery of fifty (50) acre feet of Contract Water per Delivery Year, being from \_\_\_\_\_ to \_\_\_\_\_ of each calendar year. The fifty acre feet of Contract Water shall be measured and delivered to the District at a location agreed to by Denver and the District.

C. The sole water available for delivery to the FRICO Municipal Division shares shall be the Contract Water that is delivered pursuant to the DENVER CONTRACT. The Contract Water shall be deliverable to the Municipal Division shareholders as provided by the terms and provisions of the DENVER CONTRACT or as agreed to between Denver and South Adams.

D. Use of the Contract Water to provide for the water supply for the FRICO Municipal Division is subject to the review and approval of the Denver Water Board pursuant to the terms of the DENVER CONTRACT. Pursuant to Paragraph 3.9 of the DENVER CONTRACT, Denver must approve proposed agreements with "End Users," as defined in the DENVER CONTRACT, to ascertain compliance with the terms of the DENVER CONTRACT. The Denver Water Board has approved the delivery of Contract Water to the DISTRICT.

E. At closing, FRICO shall provide for the cash payment to BURLINGTON and HENRYLYN from the proceeds of sale of FRICO Municipal division shares to the DISTRICT in accord with the terms and provisions of the agreements between the COMPANIES. So long as the DISTRICT makes the payments described in this Amended Agreement, FRICO, BURLINGTON and HENRYLYN waive any and all claims against the DISTRICT pertaining to or arising out of any division of the payments among FRICO, BURLINGTON and HENRYLYN, and FRICO, BURLINGTON and HENRYLYN, jointly and severally, agree to indemnify the DISTRICT against any such claims.

F. Unless Denver and South Adams agree otherwise, the Initial Water shall be delivered to the DISTRICT at the locations specified in Paragraph 3.2 of the DENVER CONTRACT and at the rates of delivery specified in Paragraph 3.3 of the

DENVER CONTRACT. The determination of the location of delivery and rate of delivery of the Initial Water shall be within the sole discretion of the DISTRICT, subject to the limitations of the DENVER CONTRACT. The parties shall request that the Delivery Notice specified in Paragraph 3.5 of the DENVER CONTRACT be provided simultaneously to the COMPANIES and to the DISTRICT, but if Denver fails to provide the Delivery Notice to the DISTRICT, the COMPANIES shall provide the Delivery Notice to the DISTRICT. The District shall have the first opportunity to divert any Reusable Water delivered pursuant to the DENVER CONTRACT at such times and in such amounts as requested by the DISTRICT. The Initial Water shall be perpetually delivered to the DISTRICT pursuant to the terms of this Amended Agreement, and the COMPANIES shall not assess any charge, carriage fee or other cost to the DISTRICT for deliveries of the Initial Water, except the share assessments for the stock purchased by the DISTRICT as described in this Amended Agreement. The delivery of the Initial Water to the District shall be on a "space available" basis within the Companies' facilities and shall be assessed a pro rata share of all ditch losses from the point of delivery by the Denver Water Board to the point of delivery to the District. After successful completion of the Delivery Agreement, the Initial Water may be used pursuant to the terms of this paragraph and pursuant to the terms of the Delivery Agreement, subject to the additional payment on the Initial Water described in this Amended Agreement. After execution of the Delivery Agreement as provided herein, the delivery of the Initial Water shall become part of the "Additional Contract Water" as provided below and shall be delivered pursuant to the terms of the Delivery Agreement.

G. In the event the Water Court, the State Engineer, the Division Engineer, or any other judicial or administrative agency, enters a final non-appealable order prohibiting or limiting the use of the Initial Municipal Division Water pursuant to the terms and conditions of the preceding paragraph at any time prior to or within ninety (90) days following the notice of the contemplated closing, as described in this Amended Agreement, upon delivery by the DISTRICT of the ten (10) shares of stock in FRICO, FRICO agrees to repay to the DISTRICT three million five hundred thousand dollars (\$3,500,000.00).

H. The Companies agree that the aggregate amount of five thousand (5,000) acre feet of Contract Water shall be allocated or made available for delivery to the FRICO Municipal Division shareholders as provided below.

I. The Additional Contract Water shall be allocated to the FRICO Municipal Division shares on the basis of fifty (50) acre feet of water per Delivery Year per share in the FRICO Municipal Division. FRICO and BURLINGTON Municipal Division shares that are not purchased by the DISTRICT pursuant to this Agreement shall not have any water allocated to them for delivery. In the event that not all the FRICO Municipal Division shares are ultimately purchased by the DISTRICT as provided herein, the COMPANIES shall be free to reallocate any remaining Additional Contract Water as the COMPANIES determine to be in their best interest or to adjudicate any water right changes or exchanges incorporating any remaining Contract Water or any other water

or water rights not irrevocably allocated to the FRICO and BURLINGTON Municipal Division shares as the COMPANIES determine to be in their best interests.

J. Delivery of water to the FRICO Municipal Division shareholders shall be on a Delivery Year basis as specified in the Denver Contract, unless otherwise agreed upon by Denver and the District in the Delivery Agreement.

K. All shares of stock issued by FRICO for the FRICO Municipal Division shares shall state on the face of the stock certificate that such shares of stock are subject to the terms and provisions of this Agreement.

2. Additional Payment for Initial FRICO Municipal Division shares. In the event the COMPANIES, the DISTRICT, and Denver, are able to agree on terms between themselves which result in the DISTRICT entering into the Delivery Agreement, the DISTRICT shall make an additional payment to the COMPANIES for the initial ten (10) FRICO Municipal Division shares in the amount of two million five hundred thousand dollars (\$2,500,000). Payment shall be made within ninety (90) days after the DISTRICT enters into the Delivery Agreement.

3. Option to Purchase Stock: FRICO hereby grants to the DISTRICT the option to purchase up to ninety (90) shares of stock in the FRICO's Municipal Division on the terms and subject to the conditions contained herein. The option shall expire by its own terms, unless fully exercised or terminated as provided below on the fifteenth (15th) anniversary date of the execution of the Delivery Agreement, unless otherwise extended by the mutual agreement of the parties. The purchase price for each FRICO Municipal Division share shall be the sum of six hundred thousand dollars (\$600,000.00). The conditions of the option are set forth below:

A. Each share of FRICO Municipal Division stock shall be entitled to the delivery of fifty (50) acre feet of Contract Water per Delivery Year in the manner described in paragraph 2. *supra*.

B. To and including one-hundred and twenty (120) days following the date of the execution of the Delivery Agreement, the DISTRICT shall have the option to purchase all or any portion of the remaining ninety (90) FRICO Municipal Division shares (in increments not less than 1/10th share), and such option shall be effective without payment of additional consideration.

C. Beginning as of the date of the execution of the Delivery Agreement, the DISTRICT shall have the option to purchase all or any portion (limited to a minimum increment of 1/10<sup>th</sup> share) of the remaining ninety (90) shares of stock in FRICO's Municipal Division at a purchase price of six-hundred thousand dollars (\$600,000.00) per share. The option shall extend for a period of fifteen years following the execution of the Delivery Agreement, subject to earlier termination as hereafter provided.

D. Upon the sale of any FRICO Municipal Division shares by FRICO to the DISTRICT, FRICO shall pay to BURLINGTON and HENRYLYN the percentage amounts previously agreed between the COMPANIES that are necessary to provide for the delivery of the Additional Contract Water to the FRICO Municipal Division shareholder. So long as the DISTRICT makes the payments described in this Agreement, FRICO, BURLINGTON and HENRYLYN waive any and all claims against the DISTRICT pertaining to or arising out of any division of the payments among FRICO, BURLINGTON and HENRYLYN, and FRICO, BURLINGTON and HENRYLYN, jointly and severally, agree to indemnify the DISTRICT against any such claims. The annual option payment and exercise date (Option Date) for the purchase of shares shall be the anniversary date of the execution of the Delivery Agreement.

E. The option set forth in paragraph C, above, shall be divided into three separate and independent option rights. Option right "A" shall permit the aggregate purchase of fifty-two (52) FRICO Municipal Division shares. Option right "B" shall permit the aggregate purchase of nineteen (19) FRICO Municipal Division shares. Option right "C" shall permit the aggregate purchase of nineteen (19) FRICO Municipal Division shares. The number of shares in each independent option right set forth herein shall be adjusted for any shares purchased outright by the District pursuant to paragraph B, above. In exercising the right to purchase as set forth in paragraph B, the District shall designate the distribution of the shares purchased from each of the three option rights. The number of shares remaining in each option shall thereupon be adjusted to reflect the shares that were initially purchased pursuant to paragraph B, above.

The specific number of Municipal Division shares associated with each of the three Option Rights may be revised by separate addendum to this Amended Agreement, as such may be approved by the DISTRICT and the COMPANIES, subject to any bondholder consent that may be required.

The option rights may be exercised as follows:

Option Right A:

- 1). Aggregate initial number of FRICO Municipal Division shares within Option Right A: fifty-two shares (52). Annual option payment: Based upon the initial 52 shares subject to Option A the annual option payment is six hundred ninety- three thousand three hundred thirty-three and 34/100 (\$693,333.34) payable within 120 days of the date of the execution of the Delivery Agreement. In the event that shares allocated to Option Right A are purchased pursuant to paragraph B, above, the initial annual option payment shall be reduced by the sum of thirteen thousand three hundred thirty- three and 33/100 dollars (\$13,333.33) per share initially purchased.

- 2). The annual option payment shall be increased in each year by 3.5%, compounded annually.
- 3). The option date shall be determined annually based upon the execution of the Delivery Agreement. The "Option Date" shall be the first business day in each calendar year following the execution of the Delivery Agreement.
- 4). The District may exercise the right to purchase shares under the option at any time and on as many dates during the option year as the District shall desire.
- 5). A closing for the sale of Municipal Division shall be scheduled within ten business days of the date of notice of intent to exercise by the District.

Option Right A shall expire upon the earlier of the following:

1. Non-payment of the annual option payment on or before the annual Option Date; or
2. The failure to purchase a minimum of three (3) FRICO Municipal Division shares in any single "Option Year" (determined as 364 days following the Option Date in each calendar year).

Option Right B:

- 1). Aggregate initial number of FRICO Municipal Division shares within Option Right B: nineteen (19) shares.
- 2). Annual option payment: Based upon the initial 19 shares subject to Option B, the annual option payment is two hundred fifty-three thousand, three hundred thirty-three and 33/100 dollars (\$253,333.33) payable within 120 days of the DISTRICT entering into the Delivery Agreement. In the event that shares allocated to Option Right B are purchased pursuant to paragraph B, above, the initial annual option payment shall be reduced by the sum of thirteen thousand three hundred thirty-three and 33/100 dollars (\$13,333.33) per share initially purchased.
- 3). The annual option payment shall be increased in each year by 3.5%, compounded annually.
- 4). The option date shall be determined annually based upon the execution of the Delivery Agreement. The "Option Date" shall be



the first business day in each calendar year following the execution of the Delivery Agreement.

- 5). The District may exercise the right to purchase shares under the option at any time and on as many dates during the option year as the District shall desire.
- 6). A closing for the sale of Municipal Division shall be scheduled within ten business days of the date of notice of intent to exercise by the District.

Option Right B shall expire upon the earlier of the following:

1. Non-payment of the annual option payment on or before the annual Option Date; or
2. The failure to purchase a minimum of one (1) FRICO Municipal Division shares in any single "Option Year" (determined as 364 days following the Option Date in each calendar year).

Option Right C:

- 1). Aggregate initial number of FRICO Municipal Division shares within Option Right A: nineteen (19) shares.
- 2). Annual option payment: Based upon the initial 19 shares subject to Option C the annual option payment is two hundred fifty-three thousand three hundred thirty-three and 33/100 (\$253,333.33) payable within 120 days of the DISTRICT entering into the Delivery Agreement. In the event that shares allocated to Option Right C are purchased pursuant to paragraph B, above, the initial annual option payment shall be reduced by the sum of thirteen thousand three hundred thirty-three and 33/100 dollars (\$13,333.33) per share initially purchased.
- 3). The annual option payment shall be increased in each year by 3.5%, compounded annually.
- 4). The option date shall be determined annually based upon the execution of the Delivery Agreement. The "Option Date" shall be the first business day in each calendar year following the execution of the Delivery Agreement.
- 5). The District may exercise the right to purchase shares under the option at any time and on as many dates during the option year as the District shall desire.

- 6). A closing for the sale of Municipal Division shall be scheduled within ten (10) business days of the date of notice of intent to exercise by the District.

Option Right C shall expire upon the earlier of the following:

1. Non-payment of the annual option payment on or before the annual Option Date; or
2. The failure to purchase a minimum of one (1) FRICO Municipal Division shares in any single "Option Year" (determined as 364 days following the Option Date in each calendar year).

The District shall pay the purchase price by certified funds or wire transfer deposited to an account to be designated by FRICO, in writing, not less than ten days prior to Closing. FRICO shall provide for the forthwith payment of funds received at closing to BURLINGTON and HENRYLYN as the COMPANIES have previously agreed. So long as the DISTRICT makes the payments described in this Agreement, FRICO, BURLINGTON and HENRYLYN waive any and all claims against the DISTRICT pertaining to or arising out of any division of the payments among FRICO,

BURLINGTON and HENRYLYN, and FRICO, BURLINGTON and HENRYLYN, jointly and severally, agree to indemnify the DISTRICT against any such claims.

4. Nonrecourse. The parties acknowledge and agree that the financial obligations of the DISTRICT under this Amended Agreement payable after the current fiscal year, are contingent upon funds for this Amended Agreement being appropriated, budgeted and otherwise made available. In the event funds for this Amended Agreement are not budgeted and appropriated by the DISTRICT in any year subsequent to the fiscal year of execution of this Amended Agreement, the DISTRICT may terminate this Amended Agreement by giving the COMPANIES notice of such non-appropriation. Upon the giving of such notice, this Amended Agreement shall terminate and all sums paid will be retained by the COMPANIES. For purposes of this Amended Agreement, the DISTRICT's fiscal year commences January 1 and ends December 31. The fact that the DISTRICT may enter into agreements with persons and entities that provide for payment of funds to the DISTRICT in exchange for water and sewer service from the DISTRICT shall not be construed as modifying or abrogating the terms and conditions of this paragraph.

5. Disclosure. A portion of the property that will be served by the water purchased by and delivered to the DISTRICT is owned by or under contract to purchase or being developed by Shea Homes Limited Partnership, a California limited partnership ("Shea Homes"). Representatives of Shea Homes also serve on the Board of Directors and are otherwise affiliated with Centennial Water and Sanitation District.

6. Notices. Whenever any notice, demand, or request is required or provided for under this Amended Agreement, such notice, demand, or request shall be provided in writing, or by facsimile to the following addresses or such other addresses as may be designated by a party by notice. Notice shall be deemed received when personally delivered, or when transmitted by facsimile, or three (3) days after having been deposited in a U. S. Postal Service depository to be sent by registered or certified mail, return receipt requested, with all required postage prepaid, or one (1) business day after having been sent by overnight courier:

To the DISTRICT: General Manager  
South Adams County Water and Sanitation District  
6595 East 70th Avenue  
Commerce City, CO 80037 0597  
Facsimile: (303) 288 9531

To FRICO: Manager  
Farmers Reservoir and Irrigation Company  
80 South 27th Avenue  
Brighton, CO 80601  
Facsimile: (303) 659 6077

To BURLINGTON: Manager  
BURLINGTON Ditch Reservoir and Land Company  
80 South 27th Avenue  
Brighton, CO 80601  
Facsimile: (303) 659 6077

To HENRYLYN: Rod Baumgartner, Secretary/Manager  
P.O. Box 85  
Hudson, CO 80642  
Copy to: Steven Janssen, Esq.  
3990 Pleasant Ridge Rd.  
Boulder, CO 80301  
Facsimile: (303 ) 443-4337

7. Time is of the Essence. Time is of the essence with respect to each and every aspect of this Amended Agreement and strict compliance with all time requirements is at the heart of this Amended Agreement and shall be strictly enforced.

8. Authority. The individuals executing this Amended Agreement on behalf of their respective entities are authorized by the entities to execute this Amended Agreement on behalf of their respective entities.

9. Default. The failure of a party to this Amended Agreement to perform or observe of any of the covenants, terms or conditions of this Amended Agreement shall, after reasonable notice and the opportunity to cure, be event of default.

A. Upon the occurrence of Event of Default, the non defaulting party will have the right to enforce its rights under this Amended Agreement and any applicable law by such suit, action, or special proceedings as the party deems appropriate including, without limitation, specific performance of any covenant in this Amended Agreement. Except as otherwise provided for herein, all rights and remedies of the parties may be exercised with or without notice, shall be cumulative, may be exercised separately, concurrently, or repeatedly, and the exercise of any such right or remedy shall not affect or impair the exercise of any other rights or remedy.

B. The failure of a party to insist, on one or more occasions, upon the strict observation of any of the terms of this Amended Agreement shall not be construed as a waiver or relinquishment in any future occasion of any of the terms of this Amended Agreement.

C. Any default resulting in a threat to public health, safety, or welfare shall be cured immediately by the defaulting party. As to any other default, a party who claims that other party has failed to perform as required by this Amended Agreement shall provide written notice to the other party setting forth the specific failure complained of and shall provide that party a minimum of thirty (30) days within which to cure or within which to agree with the complaining party on a plan to cure the default. If the defaulting party does not cure within the time allowed, it shall be deemed to constitute Event of Default.

D. Upon the occurrence of Event of Default, the non-defaulting party will have the right to enforce its rights under this Amended Agreement and any applicable law by such suit, action, or special proceedings as the party deems appropriate including, without limitation, specific performance of any covenant in this Amended Agreement. Except as otherwise provided for herein, all rights and remedies of the parties may be exercised with or without notice, shall be cumulative, may be exercised separately, concurrently, or repeatedly, and the exercise of any such right or remedy shall not affect or impair the exercise of any other rights or remedy.

E. To the extent Event of Default occurs prior to the Closing on the Initial Municipal Division Water, the non-defaulting party shall specifically have the right of termination of this Amended Agreement. In the event the non-defaulting party intends to terminate this Amended Agreement, the non-defaulting party shall provide a notice of termination prior to the closing on the Initial Municipal Division Water and this Amended Agreement shall be terminated upon such notice.

F. To the extent Event of Default occurs after the Closing on the Initial Municipal Division Water and prior to the first closing on the Additional Contract Water, the terms of this Amended Agreement shall remain in full force and effect.

with respect to the Initial Municipal Division Water, but the non-defaulting party shall specifically have the right of termination of this Amended Agreement with respect to the provisions regarding the Additional Contract Water. In the event the non-defaulting party intends to terminate this Amended Agreement with respect to the Additional Contract Water, the non-defaulting party shall provide a notice of termination prior to the next closing on the Additional Contract Water and the provisions of this Amended Agreement with respect to the portions of the Additional Contract Water that have not been purchased by the DISTRICT shall be terminated upon such notice.

G. To the extent Event of Default occurs after the first closing on the Additional Contract Water, the terms of this Amended Agreement shall remain in full force and effect with respect to Initial Municipal Division Water and the portion of the Additional Contract Water that has not been purchased by the DISTRICT, but the non-defaulting party shall specifically have the right of termination of this Amended Agreement with respect to the remaining portion of the Additional Contract Water. In the event the non-defaulting party intends to terminate this Amended Agreement with respect to the remaining portion of the Additional Contract Water, the non-defaulting party shall provide a notice of termination prior to the closing next closing on the Additional Contract Water and the provisions of this Amended Agreement with respect to the remaining portion of the Additional Contract Water shall be terminated upon such notice.

10. Entire Agreement; Modifications. The making, execution and delivery of this Amended Agreement by the parties have been induced by no representations, statements, warranties or agreement other than those expressed in this Amended Agreement. This Amended Agreement embodies the entire understanding of the parties as to the subject matter hereof and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to its subject matter unless expressly referred to in this Amended Agreement. Modification of this Amended Agreement by the parties may be made only by a writing signed by the party or parties to be bound by the modification.

11. Recording. This Amended Agreement shall be recorded at the office of the Adams County Clerk and Recorder and the Weld County Clerk and Recorder.

12. Estoppel and Waiver. No term or condition of this Amended Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Amended Agreement, except by a signed written instrument of the party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated in its terms. Each such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

13. Assignment and Delegation. The District may assign or partially assign this Amended Agreement at any time. Any assignee shall assume in writing all obligations imposed pursuant to this Amended Agreement to be assigned by the District, subject to approval by Denver as, described in the DENVER CONTRACT. Any assignment not approved by Denver shall be void. The Companies shall have the right to approve any assignment, without any additional compensation, and such approval shall be limited to whether the assignment is likely to result in litigation (which shall be a reasonable basis for not approving the assignment of this Amended Agreement), and such assignment shall not be unreasonably withheld.

14. Survival. The rights and obligations of the parties hereunder shall survive the Closing, shall not be merged into the deeds of conveyance, and remain fully enforceable thereafter until such time as any and all terms and conditions of this Amended Agreement are completely fulfilled.

15. Construction. The headings of sections and subsections in this Amended Agreement are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Amended Agreement.

16. Counterparts. This Amended Agreement may be executed in two or several counterparts and all counterparts so executed shall constitute one agreement binding on all of the parties, notwithstanding that all the parties are not signatories to the original or the same counterpart.

17. No Third Party Beneficiaries. There are no third party beneficiaries to this Amended Agreement. Nothing in this Amended Agreement expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity other than the parties, any right, remedy or claim under or by reason of this Amended Agreement or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in the Amended Agreement contained by and on behalf of the parties shall be for the sole and exclusive benefit of the parties.

18. Controlling Law and Venue. This Amended Agreement shall be governed under and controlled pursuant to the laws of the State of Colorado, and the venue for any disputes hereunder shall be in the DISTRICT Court, Adams County, State of Colorado.

19. Effective Date of Amended Agreement. This Amended Agreement shall be effective on the last date it is signed by the parties.

SOUTH ADAMS COUNTY WATER and SANITATION DISTRICT a Colorado Special  
District

By: Mike Benallo  
President

Date: Sept. 6, 2006

SACWSD WATER and SEWER ENTERPRISE

By: Mike Benallo  
President

Date: Sept. 6, 2006

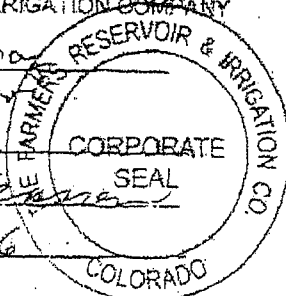
FARMERS RESERVOIR and IRRIGATION COMPANY

By: Mannal Monta  
President General Manager

Date: Sep 15 06

ATTEST: Mary Hansen

Date: 9-15-06



BURLINGTON DITCH RESERVOIR and LO COMPANY

By: Mannal Monta  
President General Manager

Date: Sep 15 06

ATTEST: Mary Hansen

Date: 9-15-06

HENRYLYN IRRIGATION DISTRICT

By: [Signature]

President 9

Date: 7-15-06

ATTEST: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF COLORADO )

ss.

COUNTY OF ADAMS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_ as \_\_\_\_\_ of the South Adams County Water and Sanitation District, a Colorado special district.

WITNESS my hand and official seal.

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

Notary Public

STATE OF COLORADO )

ss.

COUNTY OF ADAMS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_ as \_\_\_\_\_ of the SACWSD Water and Sewer Enterprise.

WITNESS my hand and official seal.



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

Notary Public

STATE OF COLORADO )  
CITY and COUNTY OF ) ss.

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of September, 2006, by Manuel Montoya as General Manager and by Mary Hansen as Corporate Secretary of the Farmers Reservoir and Irrigation Company.

WITNESS my hand and official seal.

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



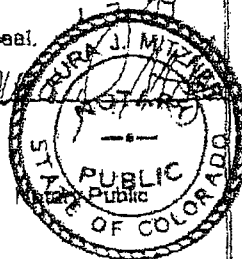
My Comm. Expires \_\_\_\_\_

STATE OF COLORADO )  
COUNTY OF ADAMS ) ss.

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of September, 2006, by Manuel Montoya as General Manager and by Mary Hansen as Corporate Secretary of the Burlington Ditch Reservoir and Land Company.

WITNESS my hand and official seal.

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



My Comm. Expires \_\_\_\_\_

STATE OF COLORADO

COUNTY OF WELD

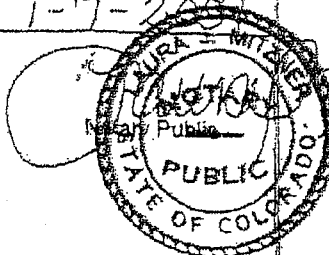
ss.

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of September, 2006, by Rad Baumgartner as  
and by \_\_\_\_\_ as  
\_\_\_\_\_ of the Henrylyn Irrigation District.

WITNESS my hand and official seal.

My commission expires

1-7-2008



My Comm. Expires \_\_\_\_\_

EXHIBIT C

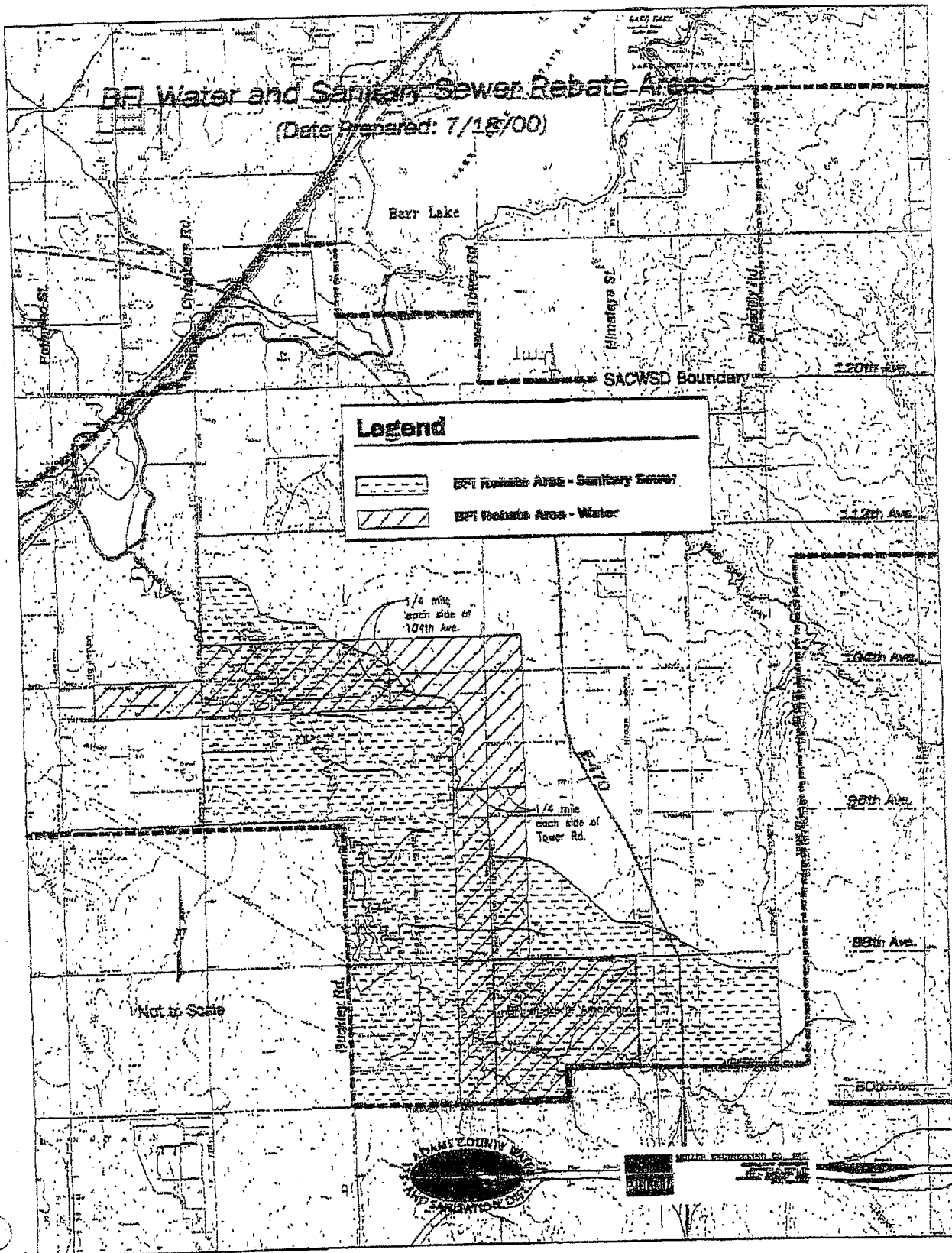


EXHIBIT C

BFI REBATE AGREEMENT  
EFFECTIVE MARCH 13, 2002

<u>WATER METER SIZE</u>	<u>WATER</u> (\$)	<u>WASTEWATER</u> (\$)
Single Family Residential 5/8 inch	464	244
Multi-Family Residential First Unit	311	163
Each Additional Unit	311	163
Commercial/Irrigation 3/4 inch	603	317
1 inch	1,183	622
1-1/2 inch	2,385	1,254
2 inch	4,134	2,174
3 inch	9,312	4,897
4 inch	15,748	8,281
6 inch	35,784	18,817

1) These amounts need to be added to the water/wastewater connection fees - Please contact South Adams County Water and Sanitation District for exact details

EXHIBIT D  
15 YEAR PAYMENT GROUP

Participant	ERUs
104 <sup>th</sup> Avenue Investment Partners	1,514
Aigaki/Daniels	234
Buffalo Highlands	647
Business Center Investors	706
Harmon Family Partnership	554
SW Chambers	200
SW Chambers via Swink	375
WorldPort	250

EXHIBIT E

(Instructions)

1. Escrow will receive payments from each of the Participants in the District's Phase 2 Project as specified in each of the respective FRICO Participant Water Resources Agreements ("Agreement"). There are anticipated to be 12 Participants; payments are expected to total \$6,000,000. Upon receipt of each payment the Escrow Agent shall place the payment in an interest accruing account comprised of United States re-purchase agreements. As provided in the Agreement, in the event any one or more Participants fail to make the required Initial Payment, that Participant's remaining interest in the Project may be reallocated to others. Within 3 days of the date specified for each payment, the Escrow Agent will report to the District which if any Participants have not made the required payment. The District will then conduct a Reallocation of Purchase Amounts under the agreement. The Escrow Agent will thereafter make a report to the District of the payments made by all Participants.

2. At closing of the FRICO Agreement (Exhibit B of the Agreement) on the Initial Municipal Division water, the Escrow Agent will pay to FRICO the sum of \$3,500,000. If this closing does not take place, then the Escrow Agent shall hold the funds until directed by the District that the Agreements have been terminated, and the Initial Payments and Deposits made by each Participant shall be returned to that Participant together with accrued interest.

3. If the closing of the FRICO Agreement does occur, the remaining funds (\$2,500,000) will be held by the Escrow Agent until receipt of notice by the District that it has notified FRICO of the acceptability of the Water Court decree and direction by the District to pay FRICO. The Escrow Agent will then pay \$2,500,000 to FRICO. Accrued interest shall be paid to the District, who will then credit it against payment of Participants. Escrow will report to the District the interest accrued on account of each Participant. In the event that FRICO has not obtained an acceptable decree by January 1, 2007, unless extended by Participants, the District will so notify the Escrow Agent and the remaining \$2,500,000 will be refunded to the Participants in proportion to their payments, together with accrued interest.

## EXHIBIT 2

### ASSIGNMENT AND BILL OF SALE (FRICO ERU Water Credits, Option Credits and ERU Water Connections)

THIS ASSIGNMENT AND BILL OF SALE ("Assignment") is made the \_\_\_\_ day of \_\_\_\_\_, 2016, by the City of Commerce City, a Colorado municipality whose address is 7887 E. 60th Avenue, Commerce City, CO 80022 ("Assignor"), in favor of SDM Investments, LLC, whose address is 7108-M South Alton Way, Englewood, CO 80112 ("Assignee").

#### RECITALS:

- A. Assignor has purchased certain ERU Water Credits and Option Fee Credits (collectively "FRICO ERU Credits") pursuant to that certain Revised Plan B Project Participant Water Resources Agreement effective December 12, 2007 ("Revised Water Resources Agreement") between the South Adams County Water and Sanitation District ("District") and Craig Ranch Golf Course, LLC and Las Vegas Gaming Investments, LLC (collectively "Craig Ranch"), as partially assigned to Assignor pursuant to an Assignment and Bill of Sale from Buffalo Highlands, LLC, a successor to Craig Ranch, dated September 16, 2010 which the District consented to on September 16, 2010. The FRICO ERU Credits provide the opportunity to purchase ERU Water Connections to be used in connection with certain lands within the District as described in Exhibit A to the Revised Water Resources Agreement, in accordance with the terms of the Revised Water Resources Agreement.
- B. Assignor has received 243 Optioned FRICO ERU Water Credits available to Assignor under the Revised Water Resources Agreement, pursuant to the Assignment referenced above, which have been recorded in the District's financial records for all required payments, and Assignor has the opportunity to purchase the corresponding ERU Water Connections. Assignor has also received 243 Option Fee Credits under the Revised Water Resources Agreement, pursuant to the Assignment referenced above, which have been recorded in the District's financial records as a result of payment under said Agreement.
- C. On or about \_\_\_\_\_, 2016, Assignor and Assignee entered into a Purchase and Sale Agreement ("Purchase Agreement") relating to the purchase of FRICO ERU Credits.
- D. Assignee is the owner of the property described in Exhibit A attached hereto ("Assignee Property"). The Assignee Property is generally located within the lands described in Exhibit A to the Revised Water Resource Agreement. At the time of acquiring the Assignee Property, Assignee anticipated that it would acquire interests in FRICO ERU Water Credits available under various Revised Plan B

Project Participant Water Resources Agreements that the District has entered into with several landowners within the District for the provision of water supplies to the City Property.

E. The Assignee Property has been annexed into the City of Commerce City, has been included within the boundaries of the District by Order of the Adams County District Court, and is within the Denver Regional Council of Governments' urban growth boundaries.

F. Assignor desires to assign its right, title, interest, in and to 25 ERU Water Credits available under the Water Resources Agreement and 25 Option Fee Credits available under the Water Resources Agreement, for use on the Assignee Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. **Capitalized Terms.** All capitalized terms that are used herein but not defined herein shall have the meaning ascribed to such terms in the Water Resource Agreement and Revised Water Resources Agreement, which are incorporated herein by this reference.

2. **Assignment.** Assignor hereby grants, bargains, sells and conveys to Assignee all of its right, title and interest in and to the following (collectively, "Transferred Participation Amount"):

Twenty Five (25) ERU Water Credits available under the 243 Optioned FRICO ERU Water Credits recorded in Assignor's favor in the District's financial records pursuant to the Assignment referenced above and the right to purchase, at Assignee's sole cost and expense, corresponding ERU Water Connections, which right is available under the terms of the Revised Water Resources Agreement.

Twenty Five (25) Option Fee Credits recorded in Assignor's favor in the District's financial records pursuant to the terms of the Revised Water Resources Agreement and the Assignment referenced above.

Assignor warrants that it has not made any prior conveyance of any of the Transferred Participation Amount and further warrants that the Transferred Participation Amount is free and clear of all liens and encumbrances, which warranties shall survive the assignment herein.



Assignee acknowledges and agrees that it shall be required to pay any normal and customary tap fees, connection charges and any and all other fees or payments payable to the District with respect to the purchase of ERU Water Connections in the same manner as is normally charged by the District relating to such ERU Water Connections.

3. **Provisions Relating to Allocations by the District.** Under the terms of the Revised Water Resources Agreement and the Resolution of the Board of Directors of South Adams County Water and Sanitation District Regarding Allocation of ERUs to FRICO Participants adopted August 28, 2001 ("FRICO Resolution"), under certain circumstances, the District will allocate ERU Water Connections among Plan B Project participants ("Tap Allocations"). In particular, the District has the right to impose Tap Allocations among Plan B Project participants if (i) utilization of new ERU Water Connections within the District has exceeded an average of 1,800 ERU Water Connections per year between January 1, 2002 and the date on which the anticipated regional wastewater treatment plant becomes operational, or (ii) utilization of new ERU Water Connections in the District in any one year has exceeded or will exceed 2,266 ERU Water Connections. The District's issuance of ERU Water Connections, which are the subject of this Assignment, is subject to: (a) the terms of the FRICO Resolution; and (b) the terms and conditions of the Revised Water Resources Agreement.

4. **Reservation.** This Assignment shall be limited to a transfer of the FRICO ERU Water Credits described in Section 2 of this Assignment.

5. **Consent of the District.** The District's consent to this Assignment, which will not be granted without receipt of payment for the District's transfer fee, and entry of this Assignment on the District's books is required before this Assignment is effective.

6. **Indemnification, Release and Hold Harmless.** Assignor and, to the extent permitted by law, Assignee agree to defend, indemnify and hold harmless the District from and against any and all liability, claims, losses, damages or expenses, including, without limitation, court costs and attorney fees that arise out of or are in any way related to the District's consent to this Assignment. In addition, Assignor and Assignee agree to release the District from and waive any and all claims, losses or causes of action that may result from the District's consent to this Assignment

7. **No Modifications.** Nothing in this Assignment shall be deemed to modify any of the terms and conditions of the Revised Water Resources Agreement or the FRICO Resolution.

IN WITNESS WHEREOF, the Parties have executed this Assignment on the day and year first above written.

ASSIGNOR:  
CITY OF COMMERCE CITY

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

ASSIGNEE:  
SDM INVESTMENTS, LLC

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