

**SECOND AMENDMENT TO
INTERGOVERNMENTAL WATER RESOURCES AGREEMENT**

**AMONG PV WATER AND SANITATION METROPOLITAN DISTRICT,
acting in an enterprise capacity pursuant to
PV WATER AND SANITATION METROPOLITAN
DISTRICT WATER ACTIVITY ENTERPRISE,
THE CITY OF COMMERCE CITY, and
SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT,
also acting in an enterprise capacity pursuant to its
WATER AND SEWER ENTERPRISE**

This **Second Amendment to the Intergovernmental Water Resources Agreement**, is entered into and made effective this ____ day of December, 2018, by and among (1) **PV Water and Sanitation Metropolitan District, Adams County, Colorado**, acting both for itself and by and through its **PV Water and Sanitation Metropolitan District Water Activity Enterprise**, (2) **City of Commerce City, Colorado**, a municipal corporation duly organized and existing as a home rule city under Article XX of the State Constitution and under its charter and a political subdivision of the State of Colorado (“Commerce City”) and (3) **South Adams County Water and Sanitation District, Adams County, Colorado**, acting both for itself and by and through its **Water and Sewer Enterprise** (collectively, “South Adams”), all collectively referred to as the “Parties.” *Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the 2006 Water Resources IGA or on Exhibit A attached hereto.*

RECITALS

A. The PV District is a duly and regularly created, established, organized, and existing metropolitan district, existing as such under and pursuant to the constitution and laws of the State of Colorado; and is authorized by §37-45.1-103, CRS, as amended, to establish water activity enterprises for the purpose of pursuing or continuing water activities, including water acquisition or water project or facility activities, including the construction, operation, repair and replacement of water or wastewater facilities.

B. The PV District is acting hereunder by and through its Water Activity Enterprise, organized under the provisions of the Water Activity Law, and established pursuant to a resolution adopted by the District’s Board of Directors on June 20, 2005, as amended and restated on March 8, 2006.

C. The PV Enterprise issued the Bonds in 2006 for the purpose of financing the purchase by the PV Enterprise of certain water rights and easements that were conveyed to the SACWSD Enterprise in exchange for and in consideration of the issuance by the SACWSD Enterprise of certain Equivalent Residential Units (the PV-ERUs).

D. Pursuant to the 2006 Indenture and the 2006 Water Resources IGA, the PV Enterprise was to sell the PV-ERUs from time to time to the City and other third parties, with the proceeds from the on-going sales of the PV-ERUs constituting the major portion of the Pledged

Revenues pledged by the PV Enterprise under the 2006 Indenture to the payment of the principal of and accreted interest on the Bonds.

E. Since approximately July 1, 2009, the PV Enterprise has failed to make the required mandatory sinking fund redemption payments for the Bonds, causing a default by the PV Enterprise under the 2006 Indenture.

F. The PV Enterprise has not sold 3,608.836 of the 4,775.836 PV-ERUs originally issued by the SACWSD Enterprise to the PV Enterprise under the terms of the 2006 IGA, is in default on the related mandatory sinking fund payments on the Bonds, and the unsold PV-ERUs are the sole asset available to satisfy the debt service on the Bonds.

G. The PV Enterprise, the SACWSD Enterprise, and the City entered into the Intergovernmental Agreement (the 2006 Water Resources IGA referenced above) under which the PV Enterprise conveyed to the SACWSD Enterprise the water rights and easements described in the 2006 IGA that the PV Enterprise acquired for such purpose with the proceeds of the Bonds and the PV Enterprise received from the SACWSD Enterprise the PV-ERUs in exchange for such water rights and easements, the PV-ERUs to be sold to the City and other third parties as set forth in the 2006 IGA.

H. The Bonds matured on December 15, 2017, and the PV Enterprise does not currently have, and does not expect to ever have, sufficient moneys to satisfy and discharge the total amount of principal of and interest due on the Bonds.

I. To settle all outstanding matters with respect to the Bonds and the 2006 Indenture, the Parties to the Settlement Agreement have negotiated the Settlement set forth therein, including that the PV Enterprise shall convey and assign its ownership of the PV-ERUs that have not been sold by the PV Enterprise as of this date to the PV-ERU Holding Trust in exchange for the full satisfaction and defeasance of the Bonds and the 2006 Indenture and to compromise any remaining outstanding accreted value of the Bonds.

J. The Parties agree, among other things, that PV Enterprise conveyed or caused to be conveyed, and the SACWSD Enterprise acquired, the water rights and the easements in accordance with the terms of the 2006 Water Resources IGA and the 2006 Water Resources IGA has been fully performed by PV Enterprise in regard to the conveyance of such water rights and easements.

K. The PV Enterprise sold and conveyed 1,167 PV-ERUs to the City and other third parties, a substantial number of which PV-ERUs have not been used as South Adams ERU Water Connections and South Adams ERU Sewer Connections as provided in the 2006 Water Resources IGA. Therefore, the 2006 Water Resources IGA needs to remain in full force and effect, notwithstanding that the PV Enterprise shall be excluded as a Party thereto as a result of this Second Amendment.

NOW, THEREFORE, the Parties hereby agree as follows:

AGREEMENT

- 1. Exclusion of the PV District and PV Enterprise.** The SACWSD Enterprise, the City and the PV Enterprise hereby agree to the exclusion of the PV District, including the PV Enterprise, from the operations and provisions of the 2006 Water Resources IGA. Accordingly, the PV District and PV Enterprise are no longer parties to the 2006 Water Resources IGA.
- 2. Governing Provisions.** The provisions of the 2006 Water Resources IGA as amended by this Second Amendment shall remain in full force and effect and the rights, duties, and liabilities of the remaining Parties thereto have not changed. Any powers or rights under the 2006 Water Resources IGA held by the PV District and/or the PV Enterprise shall be fully exercisable by South Adams. Neither South Adams nor Commerce City assumes any obligations or liabilities of the PV District and/or the PV Enterprise.
- 3. Execution in Counterparts.** This Second Amendment to Intergovernmental Water Resources Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument.
- 4. Effective Date.** This Second Amendment shall be effective on the date written above.

[Signature Pages Follow]

IN WITNESS WHEREOF, the PV Enterprise has executed this Second Amendment to Intergovernmental Water Resources Agreement on December __, 2018.

**PV WATER AND SANITATION
METROPOLITAN DISTRICT**

**ACTING BY AND THROUGH ITS
WATER ACTIVITY ENTERPRISE**

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

IN WITNESS WHEREOF, the SACWSD Enterprise has executed this Second Amendment to Intergovernmental Water Resources Agreement on December __, 2018.

**SOUTH ADAMS COUNTY WATER
AND SANITATION DISTRICT**

**ACTING FOR ITSELF AND BY AND
THROUGH ITS WATER AND SEWER
ENTERPRISE**

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

IN WITNESS WHEREOF, Commerce City has executed this Second Amendment to Intergovernmental Water Resources Agreement on December __, 2018.

(SEAL)

CITY OF COMMERCE CITY, COLORADO

ATTEST:

Mayor

City Clerk

APPROVED AS TO FORM AND SUBSTANCE:

City Attorney

EXHIBIT A

(Definitions)

“2006 Indenture” means the PV Indenture.

“2006 Water Resources IGA” means the Intergovernmental Water Resources Agreement by and among the PV District, the PV Enterprise, the SACWSD District, the SACWSD Enterprise, and the City of Commerce City, Colorado with an effective date of February 8, 2006, pursuant to which the PV Enterprise conveyed to the SACWSD Enterprise, the PV Water Rights and, as consideration therefor, the PV Enterprise acquired the PV-ERUs from the SACWSD Enterprise, as amended by the First Amendment to Intergovernmental Water Resources Agreement dated November 16, 2015.

“Bank” means BOKF, NA d/b/a Colorado State Bank and Trust, together with its successors, having a corporate trust office in Denver, Colorado and duly organized and existing under the laws of the United States of America.

“Bonds” means Capital Appreciation Revenue Bonds, Series 2006 dated March 13, 2006, issued by the District for and on behalf of the Enterprise in the original principal amount of \$32,448,336.35.

“Commerce City” or “City” means the City of Commerce City, Colorado.

“CRS” means Colorado Revised Statutes, as amended.

“Equivalent Residential Unit” or “ERU” mean an approximate measure of the level of service necessary to serve a single-family dwelling, which is used to calculate the cost of connection fees and service charges. This definition is derived from the definition of “ERU” set forth in Section 2.24 of the current SACWSD Rules.

“Intergovernmental Agreement” or “2006 IGA” mean that certain “Intergovernmental Water Resources Agreement among PV Water and Sanitation Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado, acting in an enterprise capacity pursuant to PV Water and Sanitation Metropolitan District Water Activity Enterprise; the City of Commerce City, a Colorado Home Rule municipality; and South Adams County Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado, also acting in an enterprise capacity pursuant to its Water And Sewer Enterprise” effective as of February 8, 2006, as amended and supplemented by the First Amendment to Intergovernmental Agreement dated November 16, 2015, among the SACWSD Enterprise, the PV Enterprise and the City.

“Marketing Services Agreement” means a Marketing Services Agreement entered into by the Trustee, acting under the provisions of the 2006 Indenture, with Hydro, to assist in the sale or other disposition of the PV-ERUs for the benefit of the Bond Owners.

“Net Sale Proceeds” means the proceeds from the sale of the PV-ERUs remaining after the deduction of all related expenses of such sale.

“PV District” means PV Water and Sanitation Metropolitan District (in the City of Commerce City, Colorado), Adams County, Colorado.

“PV Enterprise” means, together, the PV District acting by and through its Water Activity Enterprise.

“PV-ERU” means and consists of (1) a SACWSD ERU Water Connection and (2) the right to acquire a SACWSD ERU Wastewater Connection. SACWSD Enterprise originally issued to the PV Enterprise 4,775.836 PV-ERUs, of which there remain unsold [3,608.836].

“PV Indenture” means that certain Indenture of Trust dated as of March 1, 2006, as amended by that certain First Amendment to Indenture of Trust entered into as of September 16, 2009, by and among the Trustee, the PV Enterprise and the PV District, relating to the issuance by the PV District by and through the PV Enterprise of the Bonds.

“PV Water Rights” means certain water rights described in the 2006 Water Resources IGA that were acquired by the PV Enterprise with the proceeds of the Bonds and conveyed to the SACWSD Enterprise in exchange for the PV-ERUs.

“Reserve Fund” means the Reserve Fund created and funded under the 2006 Indenture.

“SACWSD District” means South Adams County Water and Sanitation District, Adams County, Colorado or South Adams County Water and Sanitation District, Adams County, Colorado, acting by and through the Water and Sewer Enterprise, as the context requires.

“SACWSD Enterprise” means, together, the SACWSD District acting by and through its Water and Sewer Enterprise.

“SACWSD ERU Wastewater Connection” means a wastewater connection to a single family residential structure or equivalent.

“SACWSD ERU Water Connection” means a water connection to a single family residential structure or equivalent.

“SACWSD Rules” means the Rules and Regulations for Receiving Public Water and Wastewater Services adopted and amended from time to time by the Board of Directors of the District acting by and for the SACWSD Enterprise.

“Settlement” means and includes the following actions to be taken under the Direction and Funding Agreement or the Settlement Agreement: the Bond Owners, will direct the Trustee, acting for the Trust, to (i) enter into the Settlement Agreement for the benefit of the Bond Owners; (ii) create the PV-ERU Holding Trust under the 2018 Trust Agreement; (iii) transfer the remaining balance in the Reserve Fund under the PV Indenture to the PV-ERU Holding Trust; (iv) surrender the Bonds to the PV District and the PV Enterprise for redemption in exchange for the PV-ERUs; (v) receive the PV-ERUs into the Trust for the benefit of the Bond Owners; (vi) as Trustee for the Trust, enter into the Water Resources Agreement; (vii) as Trustee for the Trust, enter into a Marketing Services Agreement; (viii) obtain an opinion of bond counsel acceptable to the Trustee that the consummation of the Settlement will not have an adverse effect on the tax status of any

interest actually or constructively received by the Bond Owners; and (ix) as Trustee for the Trust, pay all necessary expenses relating to the Settlement and the sale or other disposition of the PV-ERUs from moneys on deposit in the Trust.

“Settlement Agreement” means this Agreement for Compromise and Satisfaction of Bond Obligation to be dated the date of its execution and delivery by and among the Trustee, for the benefit of the Bond Owners, the PV District, the PV Enterprise, the SACWSD District, the SACWSD Enterprise and the City, under which the parties will agree to the Settlement.

“Settlement Expenses” means all items of expense directly or indirectly payable by the New Trust or the 2018 Trustee, on behalf of the New Trust, related to the authorization, sale, execution and delivery of the Certificates and to be paid from the Assets of the Trust, including but not limited to, commissions under the Marketing Services Agreement, title insurance premiums, closing costs and other costs relating to the conveyance of the PV ERUs to the New Trust], costs of preparation and reproduction of documents, costs of printing the Certificates and qualifying them to be held by The Depository Trust Company for the Participants (Owners), initial fees and charges of the Trustee and Paying Agent, legal fees and charges, including fees and expenses of Counsel to the Trustee, the PV Enterprise and SACWSD Enterprise, fees and disbursements of professionals engaged by the New Trust, fees and charges for preparation, execution and safekeeping of the Certificates, and any other cost, charge or fee in connection with the conveyance of the PV-ERUs and the execution and delivery of the Certificates.

“State” means the State of Colorado.

“Trustee” means the Bank.

“Trust” means PV-ERU Holding Trust, a trust under the laws of the State of Colorado, established, created and declared by the Trustee under the 2018 Trust Agreement.

“Water Activity Law” means article 45.1, title 37, CRS.

“Water Resources Agreement” means the Water Resources Agreement to be entered into between the Bank, as Trustee for the New Trust under the 2018 Indenture and the SACWSD Enterprise providing the conditions and procedures for the conveyance and assignment of the PV-ERUs by the New Trust to third party purchasers and the delivery of water and wastewater connections by the SACWSD Enterprise.

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