

WATER RESOURCES AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2015 by and between the South Adams County Water and Sanitation District, a political subdivision and special district of the State of Colorado (“District”), and the City of Commerce City, a municipal corporation (“City”) (collectively the “Parties”).

RECITALS

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

WHEREAS, the City will own and operate certain real property for the purpose of providing parks and recreation for residents within the Parties’ joint boundaries (hereinafter the “Property”); and

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

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

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

WHEREAS, the District’s Rules and Regulations require, among other things, that the party undertaking development of property to be served be responsible for acquiring and dedicating to the District senior surface water rights, other water resources or facilities to serve the Property (“Water Resources”), assuming that suitable water resources are available which will meet the District’s needs; and

WHEREAS, the District has determined that there are sufficient groundwater resources available and the City has dedicated sufficient senior water rights to allow for the provision of separate irrigation system supplies to the Property necessary to serve the 163.53 equivalent residential units (“ERUs”) referenced below; and

WHEREAS, the City recognizes inclusion of the Property within the District benefits the City; and

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

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

AGREEMENT

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

1. Augmentation Water. The City has conveyed to the District, free and clear of all liens, encumbrances and assessments, by both special warranty deeds and stock assignments, the following water rights to be used for augmentation ("Water Interests"):
 - a. 29 shares in the Fulton Irrigation Company were conveyed to the District on October 15, 2003 for which the District recognized a credit of 59.9 acre feet sufficient for 113 irrigation ERUs.
 - b. 5 paired shares in the Burlington Ditch and Land Company and the Wellington Reservoir Company and associated water rights were conveyed to the District on August 14, 2015 for which the District recognized a credit of 48.755 acre feet sufficient for 92 irrigation ERUs.
 - c. The City has utilized 21.98 acre feet (41.47 ERUs) to date, leaving a net of 86.68 acre feet or 163.53 irrigation ERUs available for use by the City.
2. Credits for Water Rights. In consideration of the foregoing dedication and payment, the District hereby agrees to provide the City with a \$5,005 credit toward the purchase of each ERU tap allocation for a total of 163.53 irrigation ERUs. Because the City is not expected to have to construct the portions of the dual water system surrounding the Property, no credit therefor will be provided against the purchase of the tap.
3. Previous Water Resources Agreement. The Water Resources Agreement between the Parties dated October 15, 2003 concerning the dedication of the 29 shares of the Fulton Irrigation Ditch Company from the City to the District is hereby repealed and replaced with this Water Resources Agreement. In addition, this Agreement shall provide a full accounting of water connections and ERU credits allocated to the City pursuant to the Water Resources Agreements dated February 9, 2005, July 18, 2005, and October 6, 2005, between the Parties and Sweetwater LLC, Fronterra Village Metropolitan District and/or Fronterra Village Metropolitan District No. 2, as amended, and shall supersede such agreements as to such credits.

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

4.1 If, in the future, the District intends to serve these types of Property by an Irrigation Water System, the District shall install, at its sole cost, the main water delivery facilities for the Irrigation Water System in accordance with the Master Utilities Plan of the District; as such plan may be revised from time to time by the District. The District shall disconnect the existing potable irrigation water tap and connect it to the non-potable Irrigation Water System. The District agrees to restore the City's property to substantially the same condition as existed prior to the disconnection and connection of said water systems and to replace any of the City's facilities which are damaged by the District. The District shall notify the City a reasonable time in advance of any such disconnection and the supply of irrigation water shall not be interrupted for more than three (3) consecutive days.

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

5.1 In order to serve properties from the dual distribution system, the District shall install, at its sole cost, the main water delivery facilities for the Irrigation Water System in accordance with the Master Utilities Plan of the District, as such plan may be revised from time to time by the District.

5.2 The City shall install, according to the District's then-current specifications, and at the City's respective sole cost, all piping and facilities required for delivery of water from the Irrigation Water System installed by the District to each lot or parcel to be served by the water

supply. As to extensions for the Potable Water System necessary to serve the Property, the City shall be required to extend water mains or water lines, and construct related facilities at its own cost, as set forth in the District's Rules and Regulations. Upon completion by the City of construction of such dual water supply lines, the District shall make appropriate inspection and notation of its records to reflect such construction.

6. Determinations of ERUs. The issuance of a water connection tap for these 163.53 irrigation ERUs shall be subject to the payment of all remaining tap fees, and compliance with the District's Rules and Regulations and the District's Design Specifications and Standards. The District will determine the number of ERUs for each tap or park site by utilizing the then-current tap allocation schedule, or a site specific ERU tap allocation based on actual calculated demands whichever is determined to be higher.
7. Tap Fees. The City shall pay all remaining tap fees at the time water connection taps are required for a park site. The credits for water rights recognized hereunder shall be available for the City to apply toward a water connection tap when requested by the City.
8. Assignments. Any or all of the ERU credits hereunder may be assignable by the City to other city-owned park property served by the District upon written notice to the District, and may be assigned to third parties upon the consent of the District.
9. District's Rules and Regulations. The City agrees to comply with all other provisions of the District's Rules and Regulations, as they may be amended.
10. Default. The District and the City hereby acknowledge that this Agreement may be enforced by law or in equity by a decree of specific performance, damages, foreclosure of liens, the withholding of public water for lack of payment or other such legal and equitable relief as may be available, subject to the provisions of the statutes of the State of Colorado. The prevailing party shall also be entitled to collect its attorney's fees and costs in any action necessary to enforce the terms of this Agreement. Any such action shall lie in the Adams County District Court, State of Colorado.
11. Survival of Terms. The provisions of this Agreement shall be deemed to survive the transfer of the Water Interests which are the subject of this Agreement and, shall be binding on the respective party's successors, transferees and assigns.
12. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto concerning the subject matter hereof, and supersedes all prior conversations, proposals, negotiations, understandings and agreements, whether written or oral; all of which are merged herein. If any portion of this Agreement

shall be deemed to be ineffective or without force and effect by any court of competent jurisdiction then the invalidity or unenforceability of such provision shall not affect the enforceability of the other provisions hereof.

13. Precedence. The provisions of this Agreement are deemed to be unique and special with regard to the subject Properties, and do not create a precedent for future water resource agreements or other matters pertaining to other properties, including those owned by the City.
14. Future Water Projects. The terms of participation in future water supply projects will be dealt with in subsequent water resources agreements.

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

SOUTH ADAMS COUNTY WATER AND
SANITATION DISTRICT

James Jones
District Manager

Attest

City of Commerce City

By: _____
Sean Ford, Mayor

Attest

City Clerk

APPROVED AS TO FORM AND
CONTENT:

By: _____
City Attorney