

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this ____ day of _____ 2022, by and between **R&M HOLDINGS LLC**, a Colorado limited liability company (“Developer”), and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties” and singularly as “Party.”

WITNESSETH:

WHEREAS, the Developer owns land located in in the Southeast Quarter of Section 14 and the Northeast Quarter of Section 23, Township 5 North, Range 68 West, 6th PM., Town of Johnstown, Larimer County, Colorado (the “Subject Property”); and

WHEREAS, the Subject Property has been annexed to the Town; and

WHEREAS, the Subject Property is being developed by the Developer as Thompson Ridge Estates (“Development”), which will consist of four (4) single family lots along the northern portion of property (the “Residential Lots”) and approximately nine (9) acres of open space (the “HOA Open Space”); and

WHEREAS, the Residential Lots will contain 0.37 acres of high-irrigated landscape (4,000 square feet per lot) and 0.52 acres of low-irrigated landscape (5,700 square feet per lot), and the HOA Open Space will contain 0.10 acres of low-irrigated landscape; and

WHEREAS, the Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Subject Property.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance (“Ordinance”), the Developer has submitted to the Town a preliminary water and sewer demand analysis for the Subject Property. Said analysis was received by the Town, is on file with the Town and, as modified by the Town’s Water Engineer by memorandum dated June 9, 2022, attached hereto as **Exhibit A**, is hereby accepted by the Town. The analysis sets forth the projected water and sewer demands for the Subject Property as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	1.32	0.066
Landscape Irrigation	1.86	1.58
Total	3.18	1.65

2. Water Rights Dedication. Within ten (10) days after the mutual execution of the Agreement, the Developer shall dedicate to the Town one (1) share of stock in the Consolidated Home Supply Ditch & Reservoir Company, Certificate # 6996, which share has been changed to include municipal use, totaling eight (8) acre-feet of usable water per year (“Water Stock”). If this dedication is not made within the required time period, this Agreement will be voided without further action from either of the Parties.

3. Surplus dedication credit. The dedication of the Water Stock and other supplies described in paragraph 2, above, will provide potable raw water credits in excess of the water demand projected for the Subject Property. As a result of said dedication, the Developer will have a surplus dedication credit with the Town of approximately 4.82 acre-feet. The credit is calculated as follows:

Credit for water dedicated:	8.00 acre-feet
LESS estimated demand:	<u>3.18 acre-feet</u>
Net current surplus credit:	4.82 acre-feet

Upon written consent of the Town, which shall not be unreasonably withheld, delayed or conditioned, the Developer is authorized to use, or convey to another developer to use, the surplus raw water credits elsewhere within the Town in accordance with the Town Code and any water bank agreement or similar agreement with the Town.

4. Commitment to serve. Subject to the Developer’s performance of all the covenants contained herein the Town commits to provide to the Subject Property up to 1.32 acre-foot per year of water supply for residential in-building use together with the corresponding sewer service and 1.86 acre-feet for irrigation as described above.

5. Future review of water usage and dedication requirements. In accordance with the Ordinance, the Town reserves the right to review actual water usage within the Subject Property at a point in time after water usage has been established to confirm the adequacy of the water demand projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payments, if necessary, based on actual water usage.

6. Payment of Water Court Transfer fees. Upon execution of this Agreement, the Developer shall pay to the Town the sum of NINE HUNDRED DOLLARS (\$900.00) as payment of the water court transfer fees required by the Ordinance. This payment is only for the required dedication of 3.18 acre-feet per year of estimated water demand and estimated consumptive use of 1.65 acre-feet per year (6 SFE) for the Subject Property and has not been assessed against any of the surplus dedication credit of 4.82 acre-feet. In accordance with the Ordinance, additional fees will be required in connection with future development of any property to which all or any portion of the surplus dedication credit is subsequently assigned pursuant to a future mutual agreement of the parties in accordance with the Town’s Ordinance. If an upward adjustment in demand is warranted based on actual water usage as described in paragraph 5, above, the Water Court Transfer Fee will also be increased proportionately

7. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given: (a) upon hand delivery, (b) upon deposit with Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (c) when transmitted via email, provided the sending party receives a read-receipt for the email or the receiving party acknowledge receipt thereof. All notices shall be addressed as follows:

TO DEVELOPER:

R&M Holdings, LLC
c/o Mike Campana
3702 Manhattan Ave., Ste. 201
Fort Collins, CO 80526
Email: mdcampana@gmail.com

WITH A COPY TO:

Bob Choate, Esq.
Coan, Payton & Payne, LLC
103 W. Mountain Ave., Suite 200
Fort Collins, CO 80524
Email: bchoate@cp2law.com

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
P.O. Box 609
450 S Parish Ave.
Johnstown, CO 80534
Email: hhill@johnstownco.gov

WITH A COPY TO
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538
Email: avi@rocklinlaw.com

Peter J. Ampe
Hill & Robbins, P.C.
1160 Lincoln St., Suite 2720
Denver, CO 80264
Email: peterampe@hillandrobbs.com

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

8. Default. In the event of default by either Party hereunder, the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and the non-defaulting Party desires to seek recourse, the Parties shall participate in mediation, the costs of which shall be shared equally by both Parties. If mediation is not successful after ninety (90) days, either Party may then commence an action in a court of competent jurisdiction and shall be entitled to such remedies as are provided by law, including the Town's ordinances.

9. Successors and assigns. The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This Agreement shall not be assigned without the prior written consent of the other Party, which shall not be unreasonably withheld. Notwithstanding the foregoing, Developer shall be entitled to transfer its interest in this Agreement to an Affiliate. For purposes of this section 9, an Affiliate shall mean an entity that is owned, controlled by or under common control with Developer.

Further, after the Town delivers Notice of Final Acceptance (as that term is defined in the Subdivision Development and Improvement Agreement between Developer and Town) of Developer's improvements, Developer shall be authorized to assign this Agreement to the homeowners' association governing and associated with the Development without the consent of the Town. In either case, Developer shall promptly deliver written notice to Town of said assignment, and Developer shall be released of further rights or obligations hereunder.

10. Amendment or modification. No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

11. Attorney's fees and costs. If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

12. Waiver. The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

13. Headings for convenience only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

14. Non severability. Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

15. Choice of laws and venue. This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any legal action shall be in the County of Larimer, State of Colorado.

16. Entire agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

17. No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

18. Recordation. This Agreement will be recorded by the Town at the Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado, shall run with the Subject Property, will be binding upon the Parties hereto and the permitted successors and assigns of the Developer and will constitute notice of this Agreement to all persons or entities not parties hereto.

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

Signatures follow.

Exhibit A to Water and Sewer Service Agreement

WATER ENGINEER MEMORANDUM

[see attached]

HELTON & WILLIAMSEN, P.C.
CONSULTING ENGINEERS IN WATER RESOURCES

7353 S. ALTON WAY, SUITE A-125
CENTENNIAL, COLORADO 80112
Phone (303) 792-2161
e-mail: thancock@helton-williamsen.com

MEMORANDUM

June 9, 2022

To: Justin Currie & Kim Meyer

From: Tom Williamsen & Tyler Hancock

Subject: Water Demand Update – Thompson Ridge Estates FDP Submittal 1

This memorandum summarizes our review of the water demand estimates submitted by Tim Grote of Irrigation Engineers, dated June 3, 2022, for Thompson Ridge Estates in the SE ¼ of sec. 14 and the NE ¼ of sec. 23, T. 5 N., R. 68 W of the 6th PM. This 20.05 acre site will have four single family lots and over 9 acres of open space. The residential lots will contain 0.37 acre (4,000 ft²/lot) of high-irrigated landscape and 0.52 acre (5,700 ft²/lot) of low-irrigated landscape. The HOA open space will contain only 0.10 acre of low-irrigated landscape.

The annual in-building demand is estimated as 1.32 acre-feet by using a factor of 0.33 acre-feet/lot.

There are no general landscape areas, but there are residential and HOA irrigated areas. The high-irrigated residential areas will demand 0.92 acre-feet/year using a demand rate of 2.5 acre-feet/acre. The low-irrigated residential areas will demand 0.79 acre-feet/year using a demand rate of 1.5 acre-feet/acre. Lastly, the HOA low-irrigated landscape will demand 0.15 acre-feet/year using a demand rate of 1.5 acre-feet/acre.

The total annual water demand is estimated as 3.18 acre-feet. We find these estimates and estimation procedures to be acceptable.

The owner, R&H Holdings LLC, will need to provide water shares for the development and include a share certificate number and history of ownership.

Attached is a scan of our review of the water demand worksheet with our notes.

Enclosure

TGH/TAW/mlc

c:\2022-06-09 Memo to JCurrie and KMeyer re Thompson Ridge Estates FDP Sub 1.doc



Town of Johnstown

Annual Water Demand Worksheet

Project Name: Thompson Ridge Estates


Site Address or Parcel #s: 8514000005

Applicant/Project Owner: R&M Holdings LLC Contact: Mike Campana

Email: mdcampana@gmail.com **Primary Phone:** 970.229.5900

Consultant /Representative: Irrigation Engineers - Contact: Tim Grote

Email: tim@irrigationengineers.com **Primary Phone:** 307.509.0238

Submitted:  **Date:** June 3, 2022
Signature

Project Summary

Detailed Description of Proposed Land Use:

Thompson Ridge Estates is a large acre single-family subdivision along the Big Thompson River that will take access off of Watercress Drive in the Thompson Crossing subdivision. Four (4) single family lots will be located along the northern portion of the property along with HOA open space within a 100'+ river buffer. The existing wetland in the NW portion of the site will be maintained and will have a 50' building development buffer. The buffer areas and a significant portions of the single-family lots will remain in a native state with no supplemental water/irrigation being provided to them. Single-family lots will be restricted on the quantity of irrigated turf, type of turf and quantity of shrub beds that will be allowed. Plants will be restricted based on their water use of medium-xeric.

For Commercial/Industrial uses – Describe type of business and expected number of employees. Please provide any relevant water use records for comparable projects, if available:

No commercial or industrial uses are proposed.

The Community That Cares

www.TownofJohnstown.com

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO | F: 970.587.0141

Overall Site Summary

Total Lot Size:	873,378	SF (20.05	Ac)
Total Impervious Coverage	59,000	SF 6.7	% of Total Lot Size
Landscaped Areas – Irrigated	38,800	SF 4.4	%
Landscaped Areas – Right-of-way	0	SF	
Landscaped Areas – Non-Irrigated	814,378	SF 93.3	%

Approx. Areas:
 Buildings: ~24,060 SF
 Entrance Road: ~7,550 SF
 Driveways: ~27,390 SF

Irrigation Demand Worksheet

Water use	Town req. interior consumptive water A.F./year/home	Number of homes	Total water A.F./year
Interior/consumptive	0.33	4	1.32

Irrigation Water use	S.F. of irrigated area/home	Acre Square feet	Irrigated acreage/home	Number of homes	Total Irrigated acreage for all homes	Town conversion of A.F. water/irrigated acre	Total Acre Feet of water needed
SFA/TH/MF Irrigated Landscape-high	0	43,560	0.00	0	0.00	2.5	0.00
SFA/TH/MF Irrigated Landscape-low	0	43,560	0.00	0	0.00	1.5	0.00
SF Detached Irrigated Landscape-high	4,000	43,560	0.09	4	0.37	2.5	0.92
SF Detached Irrigated Landscape-low	5,700	43,560	0.13	4	0.52	1.5	0.79
HOA Irrigated Landscape -low	4,500	43,560	0.10	1	0.10	1.5	0.15
Total:							1.86

Total AF of water needed (Interior Consumptive + Irrigated Landscape) for Thompson Ridge	3.18
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TGH
 6/9/2022