

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2022 (“Effective Date”), by and between **HARTFORD INVESTMENTS, LLC**, a Colorado limited liability company (“Developer”), and **THE TOWN OF JOHNSTOWN**, a Colorado home-rule municipal corporation (“Town”), collectively sometimes referred to as the “Parties.”

WITNESSETH:

WHEREAS, the Developer owns an interest in land in the SE¼ of Section 7, T04N, R67W, 6th PM, and more specifically described in the attached Exhibit A (“Subject Property”); and

WHEREAS, the Subject Property has been annexed to the Town and was the subject of an Annexation Agreement known as the Keto 161 Annexation dated September 18, 2006; and

WHEREAS, the Subject Property is being developed and will consist of 145 single family detached homes with 7.30 acres of residential irrigated landscape, irrigated open space and common use areas consisting of 1.94 acres of spray-irrigated area and 0.15 acre of drip-irrigated area, and 28.5 acres of native grasses in revegetated areas. After successful establishment of cover, irrigation will be discontinued on the 28.5 acres of revegetated open space. Together the project is known as known as The Granary Filing No. 1 (“Project”); 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 Project.

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”), Developer has submitted to the Town a preliminary water and sewer demand analysis for the Project. Said analysis was received by the Town and, as amended, is on file with the Town and, as modified by the Town’s Water Engineer by memorandum dated February 14, 2022, and thereafter revised on March 3, 2022, is hereby accepted by the Town. The analysis sets forth the projected water and sewer demands for the Project as follows:

The annual in-building water demand is estimated at 47.85 acre-feet per year using a demand rate of 0.33 acre-feet/lot. The permanent irrigation water demand is estimated at 24.06 acre-feet per year, and the temporary water irrigation demand is estimated at 29.3 acre-feet per year. Of the permanent irrigation demand, the residential irrigated area will require 18.50 acre-feet per year of raw and the common area will require 5.56 acre-feet per year of raw water. Lastly, the temporary irrigation will require 29.30 acre-feet per year of raw water for the establishment of native grasses in the revegetated open space.

Permanent Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	47.85	2.39
Irrigation	24.06	20.45
Total	71.91	22.84

Temporary Development Component	Demand (AF/YR)	Consumption (AF/YR)
Re-Vegetation Irrigation	29.30	24.91
Total	29.30	24.91

2. Water Rights Dedication.

- a. Dedication.** Within 30 days of the Effective Date of this Agreement, Developer shall dedicate to the Town 101.21 acre-feet of raw water credit, represented by 13 shares of the Consolidated Home Supply Ditch & Reservoir Company that are included in the pending Case No. 20CW3011 in the District Court, in and for Water Division No. 1. Together with the dedication of said shares, Developer shall also provide an executed and recorded dry-up covenant for the lands previously irrigated by said shares in a form approved by the Town. Because of said dry-up covenant, the Town agrees to provide eight (8) acre-feet of raw water credit per share for purposes of this Agreement. If such dedication and covenant is not provided by Developer within 30 days of the Effective Date, this Agreement will be deemed void without the need of further action by the Town.
- b. Temporary Use.** Of the 101.21 acre-feet of raw water dedicated to the Town, 29.30 acre-feet will be used to re-vegetate 28.5 acres to native grasses. When the native grasses are established, Developer shall permanently disable the irrigation system(s) used to establish the native grasses and provide written notice to the Town of such act. Upon written notice from the Town that it has accepted the permanent disabling of the irrigation system, Developer may, with the Town's written consent, assign the 29.30 acre-feet to another project or development within the Town's boundaries.
- c. Surplus dedication credit.** The dedication of the 13 shares of the Consolidated Home Supply Ditch & Reservoir Company described in Paragraph 2.a, above, will provide to Developer raw water credits in excess of the water demand projected for the Project. As a result of said dedication, Developer will have a surplus dedication credit with the Town of 2.79 acre-feet. The credit is calculated as follows:

Dedication Credit:	104.0 acre-feet
LESS Estimated demand:	101.21 acre-feet
Net current surplus credit:	2.79 acre-feet

3. Commitment to serve. Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Project up to 47.85 acre-feet per year as a permanent water supply for residential use together with the corresponding sewer service, up to 24.06 acre-feet per year as a permanent water supply for common area irrigation, and up to 29.30 acre-feet per year temporarily for revegetation to native grasses as stated in Paragraph 2.b., above.

4. 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 Project 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 based on actual water usage.

5. Payment of Water Court Transfer fees. At the time Developer dedicates the water rights and shares as required in Paragraph 2.a., above, Developer will pay to the Town the sum of **Sixty Thousand Six-Hundred dollars (\$60,600.00)** as payment of the water court transfer fees required by the Ordinance. This payment is for the dedication of 101.21 acre-feet per year of estimated temporary and permanent water demand (202 SFE) for the Project. This water court transfer fee applies only to the 101.21 acre-feet of water demand and not to any excess water credits described by Paragraph 2.c., above. Pursuant to Paragraph 4, above, if future review requires additional dedication of water, additional water court transfer fees will be required at the time of dedication.

6. Notices. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt, and shall be personally delivered, mailed postage prepaid, certified mail, return receipt requested, or sent by electronic mail on the condition that the recipient acknowledges receipt thereof, as follows:

TO DEVELOPER:

Hartford Investments, LLC
Attention: Landon Hoover
4801 Goodman Rd.
Timnath, CO 80547

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
450 S. Parish Ave.
Johnstown, CO 80534
dseele@townofjohnstown.com

WITH A COPY TO
THE TOWN ATTORNEYS:

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

Peter J. Ampe
Hill & Robbins, P.C.
1660 Lincoln St., Suite 2720
Denver, CO 80264
peterampe@hillandrobbs.com

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

7. 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 a ninety-day period, either Party may then commence a legal action, and shall be entitled to such remedies as are provided by law, including the Town's ordinances.

8. 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.

9. 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.

10. Attorney's fees and costs. If any judicial proceedings may hereafter be brought by the Town to enforce any of the provisions hereof, including an action for specific performance and/or damages, against the Developer, 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.

11. 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.

12. 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.

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

14. Choice of Law 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 claim, proceeding or action shall be in Weld County, State of Colorado.

15. Entire agreement and Authorization. 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. Each of the undersigned represents to the others that he/she is authorized by his/her respective entity to execute this Agreement on behalf of that entity.

16. 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 may be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Weld County, Colorado, and, effective as of the date of such recordation, this Agreement shall run with the Subject Property, shall be binding upon the Parties hereto and the permitted successors and assigns of the Developer and shall 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

LEGAL DESCRIPTION

The Granary Filing 1

THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO EXCEPTING THEREFROM RIGHT OF WAY CONVEYED TO THE GREAT WESTERN CONSTRUCTION COMPANY BY DEED RECORDED IN BOOK 194, PAGE 290 AND RIGHT OF WAY CONVEYED TO THE GREAT WESTERN RAILWAY COMPANY BY DEED RECORDED IN BOOK 163, PAGE 246, WELD COUNTY RECORDS, ALSO EXCEPT RESERVATIONS CONTAINED IN PATENT RECORDED IN BOOK 153, PAGE 40, AND IN DEED RECORDED IN BOOK 50, PAGE 233, WELD COUNTY RECORDS.