

WATER SERVICE AGREEMENT

THIS WATER SERVICE AGREEMENT (“Agreement”) is made and entered into this 14 day of August, 2023 (“Effective Date”), by and between **SPRING MEADOWS DEVELOPMENT, 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 a portion of the Northeast Quarter of Section 30, Township 4 North, Range 67 West of the 6th PM, Weld County, Colorado and more specifically described in the attached Exhibit A (“Subject Property”); and

WHEREAS, the Subject Property will be subdivided through a Planned Unit Development (“PUD”) process through the Weld County regulations; and

WHEREAS, by Weld County PUD Change of Zone Case No. Z-570, Weld County approved PUD zoning with estate and agricultural uses, and the Z-570 plat was recorded on October 16, 2002, at reception no. 2996633; and

WHEREAS, the PUD zoning is contingent upon recordation of a PUD Final Plan; and

WHEREAS, the Weld County Board of County Commissioners granted an extension of time for Developer to submit a Site-Specific Development Plan and PUD Final Plan, with said application to be submitted by Monday, November 14, 2022, at 9:00 a.m.; and

WHEREAS, the Subject Property consists of 5 lots. Two of the lots, Lots 4 and 5 (a 54.61-acre agricultural lot and a 6.42-acre estate lot), are not subject to this Agreement and will be served by the Little Thompson Water District. The 3 remaining lots, Lots 1, 2, and 3, ranging in size from 4.79-acres to 5.87-acres, are subject to this Agreement and shall be served by the Town. Each of the 3 lots will contain 1 single family detached home with 0.27-acres of residential irrigated landscape, together known as known as The Spring Meadows PUD (“Project”); and

WHEREAS, the Project will not receive sewer service from the Town; and

WHEREAS, the Subject Property is in the Little Thompson Water District and annexation of the Subject Property is not a condition of this Agreement; and

WHEREAS, the Town will be installing a 16-inch waterline across the Subject Property. A permanent easement and associated temporary easements are addressed in a separate document(s); and

WHEREAS, the Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water demand and a current commitment by the Town for water 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 Demand Studies. In compliance with the Town Water Rights Dedication Ordinance (“Ordinance”), Developer has submitted to the Town a preliminary water 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 April 11, 2022, is hereby accepted by the Town. The analysis sets forth the projected water demands for the Project as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	0.99	0.05
Residential Irrigation	2.01	1.70
Return Flow: In-Building	0.94	0.0
Total	3.94	1.75

The annual in-building water demand is estimated at 0.99 acre-feet using a demand rate of 0.33 acre-feet/building. The annual irrigation water demand is estimated at 2.01 acre-feet using a demand rate of 2.5 acre-feet/acre. Because there will be no return flows from the in-building use, there will be no return flows to the stream through the Town’s water treatment facility and Developer must dedicate sufficient water to the Town to replicate those return flows. Accordingly, Developer is required to dedicate 0.94 acre-feet due to the lack of return flows, constituting 95% of the in-building water demand.

2. Water Rights Dedication. Pursuant to an agreement between Developer and Reo-Deo Resources, LLLP, a Colorado limited liability limited partnership, Developer has been allocated 3.94 acre-feet of raw water credit from the Reo-Deo Water Bank to satisfy the water obligations contemplated herein.

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 3 acre-feet per year as a permanent water supply for in-building residential use and residential irrigation.

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. Upon execution of this Agreement, Developer shall pay to the Town the sum of Two Thousand Four Hundred dollars (\$2,400.00) as payment of the water court transfer fees required by the Ordinance. This payment is for the

dedication of 3.94 acre-feet per year of estimated water demand (8 SFE) for the Project. 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:

Spring Meadows Development, LLC
Attention: Roger E. Olson
PO Box 86
Johnstown, CO 80534
Email: roger@reodeo.net

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
450 S. Parish Ave.
Johnstown, CO 80534
hhill@johnstownco.gov

WITH A COPY TO THE DEVELOPER'S ATTORNEY

Brad March
March, Olive, & Sapienza, LLC
1312 S. College Avenue
Fort Collins, CO 80524

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@hillandrobbsins.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

Spring Meadows Development, LLC

By: Roger E. Olson

Title: Roger E. Olson, Operating Manager

STATE OF COLORADO)
) ss
COUNTY OF Weld)

SUBSCRIBED AND SWORN to before me this 11 day of August, 2023 by Roger E. Olson as OPERATION MANAGER for Spring Meadows Development, LLC

Witness my hand and official seal.

Rachel Blazek
Notary Public



Address

Telephone

My Commission Expires: 8.31.2026

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Troy D. Mellon, Mayor

ATTEST:

By: _____
Hannah Hill, Town Clerk

EXHIBIT A

LEGAL DESCRIPTION

Lot 1, Lot 2, and Lot 3, Spring Meadows PUDF22-0004, located in Part of the Northeast Quarter of Section 30, Township 4 North, Range 67 West of the 6th P.M., Weld County, Colorado