

**AMENDMENT TO NON-IRRIGATION SEASON REUSABLE EFFLUENT
DESIGNATION AGREEMENT**

This Amendment to Non-Irrigation Season Reusable Effluent Designation Agreement (“Amendment”) is entered into this ____ day of _____, 2020 by and between the 2534 Master Association, a Colorado nonprofit corporation (“Association”), Thompson Ranch, LLLP, a Colorado limited liability limited partnership, the Gerrard Family Limited Partnership, LLLP, a Colorado limited liability limited partnership, and the Town of Johnstown, a Colorado municipal corporation (“Town”) (collectively referred to as “Parties” and may individually be referred to herein as a party).

RECITALS

A. WHEREAS, the Town entered into the Non-Irrigation Season Reusable Effluent Designation Agreement with Thompson Ranch, LLLP and Gerrard Family Limited Partnership (collectively “Owners”) dated September 8, 2010 (“Reusable Effluent Agreement”);

B. WHEREAS, the Owners developed a mixed-use community on property within the Town known as the 2534 development and certain water rights the Owners dedicated to the Town were changed in Case No. 07CW14 to include use for non-potable irrigation of lands within the 2534 development;

C. WHEREAS, pursuant to the Reusable Effluent Agreement, the Town provides Owners with reusable effluent to satisfy certain historical return flow obligations described in the 07CW14 decree during September through May, subject to monthly and annual limits;

D. WHEREAS, the Association was created by Owners to operate and manage the common areas of the 2534 development, including operation of the non-potable irrigation system, and intend to assign the Reusable Effluent Agreement and the interests in the 07CW14 decree as necessary to operate that system;

E. WHEREAS, the two detention ponds referenced in the 07CW14 decree as part of the non-potable irrigation system and that are used to store the changed water rights (“Detention Ponds”) have on occasion intercepted runoff and drainage water and stored it out-of-priority, and the Association is being required by the State Engineer’s Office to address that issue;

F. WHEREAS, the Owners and Association desire to amend the Reusable Effluent Agreement to provide the flexibility needed to use reusable effluent to augment out-of-priority storage in the Detention Ponds;

G. WHEREAS, the Town desires to cooperate with the Association and Owners on the augmentation of the Detention Ponds to facilitate the non-potable irrigation system.

NOW, THEREFORE, in consideration of the foregoing, and in further consideration of the mutual promises contained herein and other good and valuable consideration, including without limitation a

payment of \$10.00 to the Town, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Reusable Effluent Agreement.** The Reusable Effluent Agreement remain in full force and effect and all the provisions thereunder, including all rights, obligations, conditions, and limitations, remain valid and enforceable except only for the explicit changes made thereto in this Amendment. Any future assignment of the Reusable Effluent Agreement by the Owners to the Association is hereby approved.

2. **Modifications to Reusable Effluent Agreement.** The Reusable Effluent Agreement is modified to expressly allow reusable effluent to augment out-of-priority storage in the Detention Ponds during the September through May season. The limit of 7 acre-feet of reusable effluent per month contained in the Reusable Effluent Agreement is hereby modified to allow greater monthly amounts if needed to augment out-of-priority storage in the Detention Ponds. No increase to the limitation of 57.29 acre-feet of reusable effluent in any September through May period is approved by this Amendment; however, the Town may hereafter approve such an increase in its discretion in a given year with the understanding that augmented out-of-priority storage in the Detention Ponds should allow for additional senior water rights changed in the 07CW14 decree to be delivered to the Town because the augmented storage in the Detention Ponds will reduce the changed senior water rights needed for nonpotable irrigation. The Town may also in its total discretion approve the use of reusable effluent outside the September through May season in a given year in the unlikely event that it is needed to augment out-of-priority storage in the Detention Ponds. When reusable effluent is needed to augment the Detention Ponds, the Low Point Waste Water Treatment Plant Outfall will be used if there is an intervening call that would prevent the Association from using reusable effluent from the Town's Central Waste Water Treatment Plant for augmentation.

3. **Water Court Application.** The Parties agree that the Association will file a Water Court application seeking approval of an augmentation plan for the Detention Ponds which includes reusable effluent made available under the Reusable Effluent Agreement and this Amendment. A copy of the application will be made available to the Town's water counsel at least 14 days prior to filing for approval and/or comment. The Town may become a party if it desires to monitor the case.

4. **Costs.** All costs incurred by the Town associated with negotiating this Amendment shall be paid for by the Association. Additionally, any future costs to the Town, including legal and engineering costs, for participation in water court application provided for in paragraph 3, above, shall be paid for by the Association. Prior to the execution of this Amendment, the Association shall provide a deposit to the Town in the amount of \$10,000 ("Deposit"). The Town shall utilize the Deposit for the costs incurred in negotiating this Amendment and for participation in the water court case. Any time the Deposit is drawn down to \$1,000 or less, the Town may request additional replenishments of \$5,000, or such lesser amounts as it may deem appropriate, which shall be promptly paid by the Association. If the additional funds are not received within thirty (30) days of such request, an interest penalty of 10% accruing monthly shall apply until paid. At the conclusion of the water court case, any remaining funds in the Deposit that exceed the Town's

costs shall be reimbursed to the Association by the Town within thirty (30) days. The Town shall not be required to approve the form of the Association's water court decree or provide the water contemplated herein until it has been reimbursed for the costs and any interest contemplated by this paragraph.

5. Notices. The Notice provision in the Reusable Effluent Agreement is hereby updated with the following new information for the Association and Town:

TO 2534 MASTER ASSOCIATION:

2534 Master Association
375 E. Horsetooth Road, Building 3, Suite 100
Fort Collins, CO 80525
(970) 221-2323

With Copy to:

Todd Williams
Williams & Weiss Consulting, LLC
5255 Ronald Reagan Blvd., #220
(303) 653-3940
tlwwater@msn.com

TO THOMPSON RANCH, LLLP:

c/o Todd Williams (see contact information for Todd Williams above)

TO GERRARD FAMILY LIMITED PARTNERSHIP, LLLP:

Gerrard Family Limited Partnership, LLLP
Nathan Gerrard
27154 County Road 13, Johnstown, CO
(970) 669-1436
ngerrard@gerrardinc.com

TO THE TOWN:

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

